

Chief Clerk of the House

H.B. No. 1155

Vicki Smith

AN ACT

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

(1) "Commissioner" means the commissioner of state  
ices [~~public health~~].

SECTION 2. Section 701.003, Occupations Code, is amended to  
s follows:

SECTION 3. Section 701.053, Occupations Code, is amended to  
s follows:

1

1 mutual business or professional problems and in promoting their  
2 common interest.

3 (b) A person ~~[An officer, employee, or paid consultant of a~~  
4 ~~Texas trade association in the field of dietetics]~~ may not be a  
5 dietitians board member and may not be an employee of the department  
6 employed in a "bona fide executive, administrative, or professional  
7 capacity," as that phrase is used for purposes of establishing an  
8 exemption to the overtime provisions of the federal Fair Labor  
9 Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

10 (1) the person is an officer, employee, or paid  
11 consultant of a Texas trade association in the field of dietetics;  
12 or

13 (2) the person's spouse is ~~[board who is exempt from~~  
14 ~~the state's position classification plan or is compensated at or~~  
15 ~~above the amount prescribed by the General Appropriations Act for~~  
16 ~~step 1, salary group A17, of the position classification salary~~  
17 ~~schedule.~~

18 ~~[(c) A person who is the spouse of]~~ an officer, manager, or  
19 paid consultant of a Texas trade association in the field of  
20 dietetics ~~[may not be a dietitians board member and may not be an~~  
21 ~~employee of the board who is exempt from the state's position~~  
22 ~~classification plan or is compensated at or above the amount~~  
23 ~~prescribed by the General Appropriations Act for step 1, salary~~  
24 ~~group A17, of the position classification salary schedule].~~

25 (c) ~~[(d)]~~ A person may not be ~~[serve as]~~ a member of the  
26 dietitians board or act as the general counsel to the board or the  
27 department if the person is required to register as a lobbyist under

Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 4. Sections 701.055(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the dietitians board that a member:

(1) does not have at the time of taking office ~~[appointment]~~ the qualifications required by Section 701.051(a) ~~[for appointment to the board]~~;

(2) does not maintain during service on the board the qualifications required by Section 701.051(a) ~~[for appointment to the board]~~;

(3) is ineligible for membership under Section 701.052 or 701.053 ~~[violates a prohibition established by this chapter]~~;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved ~~[, unless the absence is excused]~~ by a majority vote of the board.

(c) If the executive secretary has knowledge that a potential ground for removal exists, the executive secretary shall notify the presiding officer of the dietitians board of the ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the

1 potential ground for removal involves the presiding officer, the  
2 executive secretary shall notify the assistant presiding officer,  
3 who shall then notify the governor and the attorney general that a  
4 potential ground for removal exists.

5 SECTION 5. The heading to Section 701.056, Occupations  
6 Code, is amended to read as follows:

7 Sec. 701.056. [~~PER DIEM,~~] REIMBURSEMENT.

8 SECTION 6. Section 701.056(b), Occupations Code, is amended  
9 to read as follows:

10 (b) A member is entitled to reimbursement for travel  
11 [~~transportation~~] expenses as provided by the General  
12 Appropriations Act.

13 SECTION 7. Section 701.057, Occupations Code, is amended to  
14 read as follows:

15 Sec. 701.057. OFFICERS. (a) The governor shall designate a  
16 member of the dietitians board as the presiding officer of the board  
17 to serve in that capacity at the pleasure of the governor.

18 (b) Not later than the 30th day after the date the governor  
19 appoints new board members, the dietitians board shall meet to  
20 elect an [~~a presiding officer and~~] assistant presiding officer, who  
21 holds [~~hold~~] office according to board rules.

22 SECTION 8. Sections 701.059(a), (b), and (c), Occupations  
23 Code, are amended to read as follows:

24 (a) A person who is appointed to and qualifies for office as  
25 a member of the dietitians board may not vote, deliberate, or be  
26 counted as a member in attendance at a meeting of the board until  
27 the person completes [~~Before a dietitians board member may assume~~]



1 ~~the member's duties and before the member may be confirmed by the~~  
2 ~~senate, the member must complete at least one course of]~~ a training  
3 program that complies with ~~[established by the board under]~~ this  
4 section.

5 (b) The training program ~~[established by the dietitians~~  
6 ~~board]~~ must provide the person with information ~~[to a participant]~~  
7 regarding:

8 (1) this chapter and the dietitians board's programs,  
9 functions, rules, and budget;

10 (2) ~~[the programs operated by the board,~~  
11 ~~[(3) the role and functions of the board,~~  
12 ~~[(4) the rules of the board, with an emphasis on the~~  
13 ~~rules that relate to disciplinary and investigatory authority,~~

14 ~~[(5) the current budget for the board,~~  
15 ~~[(6)] the results of the most recent formal audit of~~  
16 the board;

17 (3) ~~[(7)]~~ the requirements of laws relating to open  
18 meetings, public information, administrative procedure, and  
19 conflicts-of-interest ~~[Chapters 551, 552, 2001, and 2002,~~  
20 ~~Government Code,~~

21 ~~[(8) the requirements of the conflict of interest laws~~  
22 ~~and other laws relating to public officials]; and~~

23 (4) ~~[(9)]~~ any applicable ethics policies adopted by  
24 the board or the Texas Ethics Commission.

25 (c) A person appointed to the dietitians board is entitled  
26 to reimbursement, as provided by the General Appropriations Act,  
27 for travel expenses incurred in attending the training program

1 regardless of whether the attendance at the program occurs before  
2 or after the person qualifies for office [~~In developing the~~  
3 ~~training program, the dietitians board shall consult with the~~  
4 ~~governor, the attorney general, and the Texas Ethics Commission~~].

5 SECTION 9. Section 701.104, Occupations Code, is amended to  
6 read as follows:

7 Sec. 701.104. DIVISION OF RESPONSIBILITIES. The dietitians  
8 board shall develop and implement policies that clearly separate  
9 ~~[define]~~ the policymaking ~~[respective]~~ responsibilities of the  
10 board and the management responsibilities of the executive  
11 secretary and the staff of the department ~~[board]~~.

12 SECTION 10. Subchapter D, Chapter 701, Occupations Code, is  
13 amended by adding Section 701.1535 to read as follows:

14 Sec. 701.1535. RULES ON CONSEQUENCES OF CRIMINAL  
15 CONVICTION. (a) The dietitians board shall adopt rules necessary  
16 to comply with Chapter 53.

17 (b) In its rules under this section, the dietitians board  
18 shall list the specific offenses for which a conviction would  
19 constitute grounds for the board to take action under Section  
20 53.021.

21 SECTION 11. Subchapter D, Chapter 701, Occupations Code, is  
22 amended by adding Sections 701.159, 701.160, and 701.161 to read as  
23 follows:

24 Sec. 701.159. DELEGATION TO COMMITTEE. The dietitians  
25 board may delegate a function or activity required by this chapter  
26 to a committee of board members on a permanent or temporary basis if  
27 the board agrees to the delegation.

1       Sec. 701.160. USE OF TECHNOLOGY. The dietitians board  
2 shall implement a policy requiring the board to use appropriate  
3 technological solutions to improve the board's ability to perform  
4 its functions. The policy must ensure that the public is able to  
5 interact with the board on the Internet.

6       Sec. 701.161. NEGOTIATED RULEMAKING AND ALTERNATIVE  
7 DISPUTE RESOLUTION POLICY. (a) The dietitians board shall develop  
8 and implement a policy to encourage the use of:

9           (1) negotiated rulemaking procedures under Chapter  
10 2008, Government Code, for the adoption of board rules; and

11           (2) appropriate alternative dispute resolution  
12 procedures under Chapter 2009, Government Code, to assist in the  
13 resolution of internal and external disputes under the board's  
14 jurisdiction.

15       (b) The dietitians board's procedures relating to  
16 alternative dispute resolution must conform, to the extent  
17 possible, to any model guidelines issued by the State Office of  
18 Administrative Hearings for the use of alternative dispute  
19 resolution by state agencies.

20       (c) The dietitians board shall designate a trained person  
21 to:

22           (1) coordinate the implementation of the policy  
23 adopted under Subsection (a);

24           (2) serve as a resource for any training needed to  
25 implement the procedures for negotiated rulemaking or alternative  
26 dispute resolution; and

27           (3) collect data concerning the effectiveness of those

1 procedures, as implemented by the board.

2 SECTION 12. Section 701.203, Occupations Code, is amended  
3 to read as follows:

4 Sec. 701.203. RECORDS OF COMPLAINTS. (a) The dietitians  
5 board shall maintain a system to promptly and efficiently act on  
6 complaints filed with the board. The board shall maintain:

7 (1) information about the parties to the complaint and  
8 the subject matter of the complaint;

9 (2) a summary of the results of the review or  
10 investigation of the complaint; and

11 (3) information about the disposition of the complaint  
12 ~~[keep an information file about each complaint filed with the~~  
13 ~~board. The information file must be kept current and contain a~~  
14 ~~record for each complaint of:~~

15 ~~[(1) each person contacted in relation to the~~  
16 ~~complaint,~~

17 ~~[(2) a summary of findings made at each step of the~~  
18 ~~complaint process,~~

19 ~~[(3) an explanation of the legal basis and reason for a~~  
20 ~~complaint that is dismissed,~~

21 ~~[(4) the schedule established for the complaint under~~  
22 ~~Section 701.204(b) and a notation of any change in the schedule, and~~

23 ~~[(5) other relevant information].~~

24 (b) The dietitians board shall make information available  
25 describing its procedures for complaint investigation and  
26 resolution.

27 (c) The dietitians board shall periodically notify the

1 parties of the status of the complaint until final disposition of  
2 the complaint. [~~If a written complaint is filed with the dietitians~~  
3 ~~board that the board or department has authority to resolve, the~~  
4 ~~board, at least quarterly and until final disposition of the~~  
5 ~~complaint, shall notify the parties to the complaint of the status~~  
6 ~~of the complaint unless notice would jeopardize an undercover~~  
7 ~~investigation.~~]

8 SECTION 13. Subchapter E, Chapter 701, Occupations Code, is  
9 amended by adding Section 701.206 to read as follows:

10 Sec. 701.206. COMPLAINT COMMITTEE. The dietitians board  
11 shall appoint at least one public member to any board committee  
12 established to review a complaint filed with the board or review an  
13 enforcement action against a license holder related to a complaint  
14 filed with the board.

15 SECTION 14. The heading to Section 701.253, Occupations  
16 Code, is amended to read as follows:

17 Sec. 701.253. LICENSE EXAMINATION.

18 SECTION 15. Section 701.253(b), Occupations Code, is  
19 amended to read as follows:

20 (b) Except as provided by Subsection (f), an applicant must  
21 pass a license [~~competency~~] examination to qualify for a license  
22 under this chapter.

23 SECTION 16. The heading to Section 701.256, Occupations  
24 Code, is amended to read as follows:

25 Sec. 701.256. LICENSING EXAMINATION RESULTS.

26 SECTION 17. Section 701.256(a), Occupations Code, is  
27 amended to read as follows:

1           (a) The department shall notify each examinee of the  
2 licensing examination results not later than the 30th day after the  
3 date the examination is administered. If an examination is graded  
4 or reviewed by a national or state testing service, the department  
5 shall notify each examinee of the examination results not later  
6 than the 14th day after the date the department receives the results  
7 from the testing service.

8           SECTION 18. Section 701.257, Occupations Code, is amended  
9 to read as follows:

10           Sec. 701.257. REEXAMINATION FOR LICENSING EXAMINATION. An  
11 applicant who fails the licensing examination three times must  
12 provide evidence to the dietitians board that the applicant has  
13 successfully completed credit hours in the applicant's areas of  
14 weakness before the applicant may apply for reexamination.

15           SECTION 19. Subchapter F, Chapter 701, Occupations Code, is  
16 amended by adding Section 701.2575 to read as follows:

17           Sec. 701.2575. JURISPRUDENCE EXAMINATION. (a) The  
18 dietitians board shall develop and administer at least twice each  
19 calendar year a jurisprudence examination to determine an  
20 applicant's knowledge of this chapter, board rules, and any other  
21 applicable laws of this state affecting the applicant's dietetics  
22 practice.

23           (b) In addition to the license examination required by  
24 Section 701.253, an applicant must pass a jurisprudence examination  
25 to qualify for a license under this chapter.

26           (c) The dietitians board shall adopt rules to implement this  
27 section, including rules related to the development and

1 administration of the examination, examination fees, guidelines  
2 for reexamination, grading the examination, and providing notice of  
3 examination results.

4 SECTION 20. Sections 701.301(a) and (d), Occupations Code,  
5 are amended to read as follows:

6 (a) A license is valid for two years [~~one year~~] after the  
7 date of issuance and may be renewed biennially [~~annually~~].

8 (d) A person whose license has been expired for 90 days or  
9 less may renew the license by paying to the dietitians board [~~the~~  
10 ~~required renewal fee and~~] a fee that is equal to 1-1/4 times [~~half~~]  
11 the amount of the renewal [~~examination~~] fee for the license. If a  
12 license has been expired for more than 90 days but less than one  
13 year, the person may renew the license by paying to the board [~~all~~  
14 ~~unpaid renewal fees and~~] a fee that is equal to 1-1/2 times the  
15 amount of the renewal fee for the license.

16 SECTION 21. Subchapter G, Chapter 701, Occupations Code, is  
17 amended by adding Section 701.304 to read as follows:

18 Sec. 701.304. GROUNDS FOR REFUSING RENEWAL. The dietitians  
19 board may refuse to renew the license of a person who fails to pay an  
20 administrative penalty imposed under Subchapter K, unless  
21 enforcement of the penalty is stayed or a court has ordered that the  
22 administrative penalty is not owed.

23 SECTION 22. Section 701.401, Occupations Code, is amended  
24 to read as follows:

25 Sec. 701.401. GROUNDS FOR DISCIPLINARY ACTION. The  
26 dietitians board shall refuse to renew a license, revoke or suspend  
27 a license, place on probation a person whose license has been

1 suspended, or reprimand a license holder for a violation of this  
2 chapter or a rule or code of ethics adopted by the board.

3 SECTION 23. Section 701.402(a), Occupations Code, is  
4 amended to read as follows:

5 (a) If the dietitians board proposes to refuse to renew a  
6 license, revoke, or suspend a person's license, the person is  
7 entitled to a hearing before the board.

8 SECTION 24. The heading to Subchapter J, Chapter 701,  
9 Occupations Code, is amended to read as follows:

10 SUBCHAPTER J. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

11 SECTION 25. Subchapter J, Chapter 701, Occupations Code, is  
12 amended by adding Sections 701.452 and 701.453 to read as follows:

13 Sec. 701.452. CEASE AND DESIST ORDER. (a) If it appears to  
14 the dietitians board that a person who is not licensed under this  
15 chapter is violating this chapter or a rule adopted under this  
16 chapter, the board after notice and opportunity for a hearing may  
17 issue a cease and desist order prohibiting the person from engaging  
18 in the activity.

19 (b) A violation of an order under this section constitutes  
20 grounds for imposing an administrative penalty under this chapter.

21 Sec. 701.453. INJUNCTION. (a) The dietitians board may  
22 apply to a district court in any county for an injunction to  
23 restrain a violation of Section 701.251 by a person.

24 (b) At the request of the board, the attorney general shall  
25 initiate and conduct an action in a district court in the state's  
26 name to obtain an injunction under this section.

27 SECTION 26. Section 701.502, Occupations Code, is amended



1 by adding Subsection (c) to read as follows:

2 (c) The dietitians board by rule shall adopt an  
3 administrative penalty schedule based on the criteria listed in  
4 Subsection (b) for violations of this chapter or board rules to  
5 ensure that the amounts of penalties imposed are appropriate to the  
6 violation. The board shall provide the administrative penalty  
7 schedule to the public on request.

8 SECTION 27. Subchapter K, Chapter 701, Occupations Code, is  
9 amended by adding Section 701.512 to read as follows:

10 Sec. 701.512. REFUND. (a) Subject to Subsection (b), the  
11 dietitians board may order a license holder to pay a refund to a  
12 consumer as provided in an agreement resulting from an informal  
13 settlement conference instead of or in addition to imposing an  
14 administrative penalty under this chapter.

15 (b) The amount of a refund ordered as provided in an  
16 agreement resulting from an informal settlement conference may not  
17 exceed the amount the consumer paid to the license holder for a  
18 service regulated by this chapter. The board may not require  
19 payment of other damages or estimate harm in a refund order.

20 SECTION 28. Sections 701.056(a) and 701.059(d),  
21 Occupations Code, are repealed.

22 SECTION 29. (a) Not later than January 1, 2006, the Texas  
23 State Board of Examiners of Dietitians shall:

24 (1) develop and implement the policies required by  
25 Sections 701.160 and 701.161, Occupations Code, as added by this  
26 Act; and

27 (2) adopt the rules required by Chapter 701,

1 Occupations Code, as amended by this Act.

2 (b) Not later than March 1, 2006, the Texas State Board of  
3 Examiners of Dietitians shall develop the jurisprudence  
4 examination required by Section 701.2575, Occupations Code, as  
5 added by this Act.

6 SECTION 30. (a) The changes in law made by Sections  
7 701.053, 701.055, and 701.059, Occupations Code, as amended by this  
8 Act, regarding the prohibitions on or qualifications of members of  
9 the Texas State Board of Examiners of Dietitians do not affect the  
10 entitlement of a member serving on the board immediately before  
11 September 1, 2005, to continue to serve and function as a member of  
12 the board for the remainder of the member's term. The changes in  
13 law made by those sections apply only to a member appointed on or  
14 after September 1, 2005.

15 (b) The changes in law made by this Act with respect to  
16 conduct that is grounds for imposition of a disciplinary sanction  
17 or for obtaining an injunction apply only to conduct that occurs on  
18 or after the effective date of this Act. Conduct that occurs before  
19 the effective date of this Act is governed by the law in effect on  
20 the date the conduct occurred, and the former law is continued in  
21 effect for that purpose.

22 (c) The change in law made by Section 701.2575, Occupations  
23 Code, as added by this Act, regarding the jurisprudence  
24 examination, applies only to an application for a license filed  
25 with the Texas State Board of Examiners of Dietitians under Chapter  
26 701, Occupations Code, as amended by this Act, on or after September  
27 1, 2006.

1           SECTION 31. Notwithstanding Section 701.301, Occupations  
2 Code, as amended by this Act, the fee for an applicant renewing an  
3 expired license under Chapter 701, Occupations Code, before  
4 September 1, 2007, is governed by the law in effect immediately  
5 before the effective date of this Act, and the former law is  
6 continued in effect for that purpose. An applicant who renews an  
7 expired license under Chapter 701, Occupations Code, on or after  
8 September 1, 2007, is subject to the fees provided by Section  
9 701.301, Occupations Code, as amended by this Act.

10           SECTION 32. This Act takes effect September 1, 2005.

# HOUSE COMMITTEE REPORT

05 APR -6 PM 6:44

HOUSE OF REPRESENTATIVES

1<sup>st</sup> Printing

By: Truitt

H.B. No. 1155

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas State Board of Examiners of Dietitians.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 701.002(1) and (2), Occupations Code, are amended to read as follows:

(1) "Commissioner" means the commissioner of state health services [~~public health~~].

(2) "Department" means the [~~Texas~~] Department of State Health Services.

SECTION 2. Section 701.003, Occupations Code, is amended to read as follows:

Sec. 701.003. APPLICATION OF SUNSET ACT. The Texas State Board of Examiners of Dietitians is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017 [~~2005~~].

SECTION 3. Section 701.053, Occupations Code, is amended to read as follows:

Sec. 701.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a [~~nonprofit~~] cooperative[~~r~~] and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with

1 mutual business or professional problems and in promoting their  
2 common interest.

3 (b) A person ~~[An officer, employee, or paid consultant of a~~  
4 ~~Texas trade association in the field of dietetics]~~ may not be a  
5 dietitians board member and may not be an employee of the department  
6 employed in a "bona fide executive, administrative, or professional  
7 capacity," as that phrase is used for purposes of establishing an  
8 exemption to the overtime provisions of the federal Fair Labor  
9 Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

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11 consultant of a Texas trade association in the field of dietetics;  
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14 ~~the state's position classification plan or is compensated at or~~  
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18 ~~[(c) A person who is the spouse of]~~ an officer, manager, or  
19 paid consultant of a Texas trade association in the field of  
20 dietetics ~~[may not be a dietitians board member and may not be an~~  
21 ~~employee of the board who is exempt from the state's position~~  
22 ~~classification plan or is compensated at or above the amount~~  
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26 dietitians board or act as the general counsel to the board or the  
27 department if the person is required to register as a lobbyist under

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(1) does not have at the time of taking office ~~[appointment]~~ the qualifications required by Section 701.051(a) ~~[for appointment to the board]~~;

(2) does not maintain during service on the board the qualifications required by Section 701.051(a) ~~[for appointment to the board]~~;

(3) is ineligible for membership under Section 701.052 or 701.053 ~~[violates a prohibition established by this chapter]~~;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved ~~[, unless the absence is excused]~~ by a majority vote of the board.

(c) If the executive secretary has knowledge that a potential ground for removal exists, the executive secretary shall notify the presiding officer of the dietitians board of the ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the

1 potential ground for removal involves the presiding officer, the  
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1 ~~the member's duties and before the member may be confirmed by the~~  
2 ~~senate, the member must complete at least one course of]~~ a training  
3 program that complies with ~~[established by the board under]~~ this  
4 section.

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6 ~~board]~~ must provide the person with information ~~[to a participant]~~  
7 regarding:

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13 ~~rules that relate to disciplinary and investigatory authority,~~

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15 ~~[(6)]~~ the results of the most recent formal audit of  
16 the board;

17 (3) ~~[(7)]~~ the requirements of laws relating to open  
18 meetings, public information, administrative procedure, and  
19 conflicts-of-interest ~~[Chapters 551, 552, 2001, and 2002,~~  
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21 ~~[(8) the requirements of the conflict of interest laws~~  
22 ~~and other laws relating to public officials]; and~~

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13 amended by adding Section 701.1535 to read as follows:

14 Sec. 701.1535. RULES ON CONSEQUENCES OF CRIMINAL  
15 CONVICTION. (a) The dietitians board shall adopt rules necessary  
16 to comply with Chapter 53.

17 (b) In its rules under this section, the dietitians board  
18 shall list the specific offenses for which a conviction would  
19 constitute grounds for the board to take action under Section  
20 53.021.

21 SECTION 11. Subchapter D, Chapter 701, Occupations Code, is  
22 amended by adding Sections 701.159, 701.160, and 701.161 to read as  
23 follows:

24 Sec. 701.159. DELEGATION TO COMMITTEE. The dietitians  
25 board may delegate a function or activity required by this chapter  
26 to a committee of board members on a permanent or temporary basis if  
27 the board agrees to the delegation.

1       Sec. 701.160. USE OF TECHNOLOGY. The dietitians board  
2 shall implement a policy requiring the board to use appropriate  
3 technological solutions to improve the board's ability to perform  
4 its functions. The policy must ensure that the public is able to  
5 interact with the board on the Internet.

6       Sec. 701.161. NEGOTIATED RULEMAKING AND ALTERNATIVE  
7 DISPUTE RESOLUTION POLICY. (a) The dietitians board shall develop  
8 and implement a policy to encourage the use of:

9           (1) negotiated rulemaking procedures under Chapter  
10 2008, Government Code, for the adoption of board rules; and

11           (2) appropriate alternative dispute resolution  
12 procedures under Chapter 2009, Government Code, to assist in the  
13 resolution of internal and external disputes under the board's  
14 jurisdiction.

15       (b) The dietitians board's procedures relating to  
16 alternative dispute resolution must conform, to the extent  
17 possible, to any model guidelines issued by the State Office of  
18 Administrative Hearings for the use of alternative dispute  
19 resolution by state agencies.

20       (c) The dietitians board shall designate a trained person  
21 to:

22           (1) coordinate the implementation of the policy  
23 adopted under Subsection (a);

24           (2) serve as a resource for any training needed to  
25 implement the procedures for negotiated rulemaking or alternative  
26 dispute resolution; and

27           (3) collect data concerning the effectiveness of those

1 procedures, as implemented by the board.

2 SECTION 12. Section 701.203, Occupations Code, is amended  
3 to read as follows:

4 Sec. 701.203. RECORDS OF COMPLAINTS. (a) The dietitians  
5 board shall maintain a system to promptly and efficiently act on  
6 complaints filed with the board. The board shall maintain:

7 (1) information about the parties to the complaint and  
8 the subject matter of the complaint;

9 (2) a summary of the results of the review or  
10 investigation of the complaint; and

11 (3) information about the disposition of the complaint  
12 ~~[keep an information file about each complaint filed with the~~  
13 ~~board. The information file must be kept current and contain a~~  
14 ~~record for each complaint of:~~

15 ~~[(1) each person contacted in relation to the~~  
16 ~~complaint;~~

17 ~~[(2) a summary of findings made at each step of the~~  
18 ~~complaint process;~~

19 ~~[(3) an explanation of the legal basis and reason for a~~  
20 ~~complaint that is dismissed;~~

21 ~~[(4) the schedule established for the complaint under~~  
22 ~~Section 701.204(b) and a notation of any change in the schedule; and~~

23 ~~[(5) other relevant information].~~

24 (b) The dietitians board shall make information available  
25 describing its procedures for complaint investigation and  
26 resolution.

27 (c) The dietitians board shall periodically notify the

1 parties of the status of the complaint until final disposition of  
2 the complaint. [~~If a written complaint is filed with the dietitians~~  
3 ~~board that the board or department has authority to resolve, the~~  
4 ~~board, at least quarterly and until final disposition of the~~  
5 ~~complaint, shall notify the parties to the complaint of the status~~  
6 ~~of the complaint unless notice would jeopardize an undercover~~  
7 ~~investigation.~~]

8 SECTION 13. Subchapter E, Chapter 701, Occupations Code, is  
9 amended by adding Section 701.206 to read as follows:

10 Sec. 701.206. COMPLAINT COMMITTEE. The dietitians board  
11 shall appoint at least one public member to any board committee  
12 established to review a complaint filed with the board or review an  
13 enforcement action against a license holder related to a complaint  
14 filed with the board.

15 SECTION 14. The heading to Section 701.253, Occupations  
16 Code, is amended to read as follows:

17 Sec. 701.253. LICENSE EXAMINATION.

18 SECTION 15. Section 701.253(b), Occupations Code, is  
19 amended to read as follows:

20 (b) Except as provided by Subsection (f), an applicant must  
21 pass a license [~~competency~~] examination to qualify for a license  
22 under this chapter.

23 SECTION 16. The heading to Section 701.256, Occupations  
24 Code, is amended to read as follows:

25 Sec. 701.256. LICENSING EXAMINATION RESULTS.

26 SECTION 17. Section 701.256(a), Occupations Code, is  
27 amended to read as follows:

1           (a) The department shall notify each examinee of the  
2 licensing examination results not later than the 30th day after the  
3 date the examination is administered. If an examination is graded  
4 or reviewed by a national or state testing service, the department  
5 shall notify each examinee of the examination results not later  
6 than the 14th day after the date the department receives the results  
7 from the testing service.

8           SECTION 18. Section 701.257, Occupations Code, is amended  
9 to read as follows:

10          Sec. 701.257. REEXAMINATION FOR LICENSING EXAMINATION. An  
11 applicant who fails the licensing examination three times must  
12 provide evidence to the dietitians board that the applicant has  
13 successfully completed credit hours in the applicant's areas of  
14 weakness before the applicant may apply for reexamination.

15          SECTION 19. Subchapter F, Chapter 701, Occupations Code, is  
16 amended by adding Section 701.2575 to read as follows:

17          Sec. 701.2575. JURISPRUDENCE EXAMINATION. (a) The  
18 dietitians board shall develop and administer at least twice each  
19 calendar year a jurisprudence examination to determine an  
20 applicant's knowledge of this chapter, board rules, and any other  
21 applicable laws of this state affecting the applicant's dietetics  
22 practice.

23          (b) In addition to the license examination required by  
24 Section 701.253, an applicant must pass a jurisprudence examination  
25 to qualify for a license under this chapter.

26          (c) The dietitians board shall adopt rules to implement this  
27 section, including rules related to the development and

1 administration of the examination, examination fees, guidelines  
2 for reexamination, grading the examination, and providing notice of  
3 examination results.

4 SECTION 20. Sections 701.301(a) and (d), Occupations Code,  
5 are amended to read as follows:

6 (a) A license is valid for two years [~~one year~~] after the  
7 date of issuance and may be renewed biennially [~~annually~~].

8 (d) A person whose license has been expired for 90 days or  
9 less may renew the license by paying to the dietitians board [~~the~~  
10 ~~required renewal fee and~~] a fee that is equal to 1-1/4 times [~~half~~]  
11 the amount of the renewal [~~examination~~] fee for the license. If a  
12 license has been expired for more than 90 days but less than one  
13 year, the person may renew the license by paying to the board [~~all~~  
14 ~~unpaid renewal fees and~~] a fee that is equal to 1-1/2 times the  
15 amount of the renewal fee for the license.

16 SECTION 21. Subchapter G, Chapter 701, Occupations Code, is  
17 amended by adding Section 701.304 to read as follows:

18 Sec. 701.304. GROUNDS FOR REFUSING RENEWAL. The dietitians  
19 board may refuse to renew the license of a person who fails to pay an  
20 administrative penalty imposed under Subchapter K, unless  
21 enforcement of the penalty is stayed or a court has ordered that the  
22 administrative penalty is not owed.

23 SECTION 22. Section 701.401, Occupations Code, is amended  
24 to read as follows:

25 Sec. 701.401. GROUNDS FOR DISCIPLINARY ACTION. The  
26 dietitians board shall refuse to renew a license, revoke or suspend  
27 a license, place on probation a person whose license has been

1 suspended, or reprimand a license holder for a violation of this  
2 chapter or a rule or code of ethics adopted by the board.

3 SECTION 23. Section 701.402(a), Occupations Code, is  
4 amended to read as follows:

5 (a) If the dietitians board proposes to refuse to renew a  
6 license, revoke, or suspend a person's license, the person is  
7 entitled to a hearing before the board.

8 SECTION 24. The heading to Subchapter J, Chapter 701,  
9 Occupations Code, is amended to read as follows:

10 SUBCHAPTER J. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

11 SECTION 25. Subchapter J, Chapter 701, Occupations Code, is  
12 amended by adding Sections 701.452 and 701.453 to read as follows:

13 Sec. 701.452. CEASE AND DESIST ORDER. (a) If it appears to  
14 the dietitians board that a person who is not licensed under this  
15 chapter is violating this chapter or a rule adopted under this  
16 chapter, the board after notice and opportunity for a hearing may  
17 issue a cease and desist order prohibiting the person from engaging  
18 in the activity.

19 (b) A violation of an order under this section constitutes  
20 grounds for imposing an administrative penalty under this chapter.

21 Sec. 701.453. INJUNCTION. (a) The dietitians board may  
22 apply to a district court in any county for an injunction to  
23 restrain a violation of Section 701.251 by a person.

24 (b) At the request of the board, the attorney general shall  
25 initiate and conduct an action in a district court in the state's  
26 name to obtain an injunction under this section.

27 SECTION 26. Section 701.502, Occupations Code, is amended

by adding Subsection (c) to read as follows:

(c) The dietitians board by rule shall adopt an administrative penalty schedule based on the criteria listed in Subsection (b) for violations of this chapter or board rules to ensure that the amounts of penalties imposed are appropriate to the violation. The board shall provide the administrative penalty schedule to the public on request.

SECTION 27. Subchapter K, Chapter 701, Occupations Code, is amended by adding Section 701.512 to read as follows:

Sec. 701.512. REFUND. (a) Subject to Subsection (b), the dietitians board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

SECTION 28. Sections 701.056(a) and 701.059(d), Occupations Code, are repealed.

SECTION 29. (a) Not later than January 1, 2006, the Texas State Board of Examiners of Dietitians shall:

(1) develop and implement the policies required by Sections 701.160 and 701.161, Occupations Code, as added by this Act; and

(2) adopt the rules required by Chapter 701,



1 Occupations Code, as amended by this Act.

2 (b) Not later than March 1, 2006, the Texas State Board of  
3 Examiners of Dietitians shall develop the jurisprudence  
4 examination required by Section 701.2575, Occupations Code, as  
5 added by this Act.

6 SECTION 30. (a) The changes in law made by Sections  
7 701.053, 701.055, and 701.059, Occupations Code, as amended by this  
8 Act, regarding the prohibitions on or qualifications of members of  
9 the Texas State Board of Examiners of Dietitians do not affect the  
10 entitlement of a member serving on the board immediately before  
11 September 1, 2005, to continue to serve and function as a member of  
12 the board for the remainder of the member's term. The changes in  
13 law made by those sections apply only to a member appointed on or  
14 after September 1, 2005.

15 (b) The changes in law made by this Act with respect to  
16 conduct that is grounds for imposition of a disciplinary sanction  
17 or for obtaining an injunction apply only to conduct that occurs on  
18 or after the effective date of this Act. Conduct that occurs before  
19 the effective date of this Act is governed by the law in effect on  
20 the date the conduct occurred, and the former law is continued in  
21 effect for that purpose.

22 (c) The change in law made by Section 701.2575, Occupations  
23 Code, as added by this Act, regarding the jurisprudence  
24 examination, applies only to an application for a license filed  
25 with the Texas State Board of Examiners of Dietitians under Chapter  
26 701, Occupations Code, as amended by this Act, on or after September  
27 1, 2006.

1           SECTION 31. Notwithstanding Section 701.301, Occupations  
2 Code, as amended by this Act, the fee for an applicant renewing an  
3 expired license under Chapter 701, Occupations Code, before  
4 September 1, 2007, is governed by the law in effect immediately  
5 before the effective date of this Act, and the former law is  
6 continued in effect for that purpose. An applicant who renews an  
7 expired license under Chapter 701, Occupations Code, on or after  
8 September 1, 2007, is subject to the fees provided by Section  
9 701.301, Occupations Code, as amended by this Act.

10          SECTION 32. This Act takes effect September 1, 2005.

COMMITTEE REPORT

The Honorable Tom Craddick  
Speaker of the House of Representatives

3-30-05  
(date)

Sir:

We, your COMMITTEE ON PUBLIC HEALTH

to whom was referred HB 1155 have had the same under consideration and beg to report back with the recommendation that it

- ☒ do pass, without amendment.
- ☐ do pass, with amendment(s).
- ☐ do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
- ☒ yes ☐ no A fiscal note was requested.
- ☐ yes ☒ no A criminal justice policy impact statement was requested.
- ☐ yes ☒ no An equalized educational funding impact statement was requested.
- ☐ yes ☒ no An actuarial analysis was requested.
- ☐ yes ☒ no A water development policy impact statement was requested.
- ☐ yes ☒ no A tax equity note was requested.
- ☐ The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor \_\_\_\_\_

Joint Sponsors: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Co-Sponsors: \_\_\_\_\_

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Delisi, Chair	/			
Laubenberg, Vice-chair	/			
Coleman	/			
Dawson	/			
Jackson	/			
McReynolds	/			
Solis	/			
Truitt	/			
Zedler				/

Total      8      aye  
                 0      nay  
                 0      present, not voting  
                 1      absent

Alvin J. Delisi  
CHAIR

## **BILL ANALYSIS**

H.B. 1155  
By: Truitt  
Public Health  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Legislature created the Texas State Board of Examiners of Dietitians in 1983, to ensure that safe and quality dietetic services are provided to the citizens of Texas. The Board has three primary functions: license qualified individuals to use the term "licensed dietitian" in Texas; set standards relating to the practice of dietetics; and enforce the Licensed Dietitian Act, including investigating and resolving complaints. The Board is administratively attached to the Texas Department of State Health Services.

The Board is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the Legislature. As a result of its review of the Board, the Sunset Advisory Commission recommended its continuation and several statutory modifications that are contained in this legislation.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas State Board of Examiners of Dietitians in SECTION 10, SECTION 19, and SECTION 26 of this bill. In addition, under the general rulemaking authority already granted to the policymaking body, rules may be developed to implement other new provisions found in this bill.

### **ANALYSIS**

H.B. 1155 amends the Occupations Code relating to the continuation and functions of the Texas State Board of Examiners of Dietitians. The bill also incorporates several standard across-the-board recommendations of the Sunset Commission.

#### ***Continuation of the Board***

The bill continues the Texas State Board of Examiners of Dietitians until September 1, 2017.

#### ***Board Member Provisions***

H.B. 1155 updates standard Sunset across-the-board language prohibiting Board members, high-level employees, and spouses from serving as an officer or employee of a related Texas trade association. The bill adds standard Sunset language authorizing the Governor to designate the Board's presiding officer. The bill updates standard Sunset language requiring members of the Board to complete training before assuming their duties, and requiring the Board to separate its policymaking duties from the agency's management functions. The bill also updates standard Sunset language specifying the grounds for removing a Board member.

The bill specifies that the Board may appoint committees consisting of Dietitian Board members, and requires the Board to appoint at least one public Board member to complaint review committees. The bill also removes Board member entitlement to the compensatory per diem, but clarifies that members are entitled to reimbursement for travel expenses to attend Board meetings and to attend training programs.

#### ***Licensing Process***

The bill applies standard guidelines on the use of criminal convictions in licensing dietitians, and requires the Board to develop and administer a jurisprudence exam that applicants must pass to

become licensed. H.B. 1155 also bases the delinquent license renewal fees on the Board's normally required renewal fee, rather than the examination fee.

### ***Enforcement Authority***

The bill authorizes the Board to refuse to renew a license generally as a disciplinary action and specifically for persons who fail to pay an administrative penalty. H.B. 1155 authorizes the Board to order refunds as part of the settlement conference process, and prohibits the amount of a refund from exceeding the amount the consumer paid to the licensed dietitian. The bill authorizes the Board to seek an injunction in district court against unlicensed persons referring to themselves as licensed dietitians. The bill further authorizes the Board to issue cease-and-desist orders to stop unlicensed activity, after providing the unlicensed person with notice and opportunity for a hearing. H.B. 1155 requires the Board to develop an administrative penalty matrix in rule that ensures that penalty amounts appropriately match violations. H.B. 1155 updates statutory language requiring the Department to maintain information on all complaints and notify the parties about policies for and status of complaints.

H.B. 1155 changes the length that license is valid from one year to two years, and that the license may be renewed on a biennially basis. For licenses expired for 90 days the renewal fee would be equal to 1¼ times the normal renewal fee, while for licenses expired for more than 90 days the fee would be equal to 1½ times the normal renewal fee.

### ***Administrative Process***

H.B. 1155 adds standard Sunset across-the-board language requiring the Board to make effective use of technology in its delivery of services and provision of information to the public. The bill also requires the Board to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.

### **EFFECTIVE DATE**

September 1, 2005.

SUMMARY OF COMMITTEE ACTION

HB 1155

March 23, 2005                      upon final adjourn./recess

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Considered in public hearing  
Testimony taken in committee (See attached witness list.)  
Left pending in committee

March 30, 2005              2:00PM      or upon final adjourn./recess

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Considered in public hearing  
Reported favorably without amendment(s)

WITNESS LIST

HB 1155  
HOUSE COMMITTEE REPORT  
Public Health Committee

March 23, 2005 - upon final adjourn./recess

For: Farr, Linda (Texas Dietetic Association)  
Montgomery, Cathy (Self)  
Poinsett, Hawley (Texas Dietetic Association)  
Ricks, Felicia (Texas Dietetic Association Renal  
Practice Task Force)  
On: Peterson, Debbie (Dept of State Health Services  
Professional Licensing)  
Trost, Amy (Sunset Commission)

Registering, but not testifying:

For: Hooser, Greg (Texas Dietetic Association)

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**Revision 1**

**March 23, 2005**

**TO:** Honorable Dianne White Delisi, Chair, House Committee on Public Health

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB1155** by Truitt (Relating to the continuation and functions of the Texas State Board of Examiners of Dietitians.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill (Sunset legislation) relates to the continuation and functions of the Texas State Board of Examiners of Dietitians and would continue the board until September 1, 2017. The board is administratively attached to the Department of State Health Services (DSHS). The bill would amend various provisions in Chapter 701 of the Occupations Code. The bill would repeal Section 701.056 (a) related to the authorization of board member per diem and Section 701.059 (d) related to the authorization of board training requirements.

Section 701.059 (c) would allow for the reimbursement of travel expenses for persons appointed to the dietitians board prior to taking office that may be incurred while attending the training program prescribed in the bill.

Section 701.160 would require the dietitians board to implement policy that ensures that the public is able to interact with the board on the Internet.

Section 701.2527 would require the dietitians board to develop and administer at least twice each calendar year a jurisprudence examination that an applicant must pass to qualify for a license. (The jurisprudence examination requirement is in addition to the license examination requirement.)

Section 701.301 (d) would require that the renewal fee for an expired license would be 1-1/4 times the amount of the renewal fee for the license, for a license expired 90 days or less. For a license expired over 90 days, the bill would require that the renewal fee would be equal to 1-1/2 times the amount of the renewal fee.

Section 701.453 would authorize the Office of the Attorney General (OAG), at the request of the dietitians board, to seek injunctions prohibiting an unlicensed dietitian from providing services.

DSHS indicates that implementing the bill's provisions would result in a minimal decrease in license renewal fee revenue generated. DSHS assumes that any cost incurred in developing the examination questions for the jurisprudence examination would be absorbed within the agency's existing resources. The Office of the Attorney General assumes that any additional work that may result from implementing the bill's provisions would be absorbed with current staff.



**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 116 Sunset Advisory Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 537 Department of State Health Services

**LBB Staff:** JOB, CL, PP, RM

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 22, 2005

**TO:** Honorable Dianne White Delisi, Chair, House Committee on Public Health

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB1155** by Truitt (Relating to the continuation and functions of the Texas State Board of Examiners of Dietitians.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill (Sunset legislation) relates to the continuation and functions of the Texas State Board of Examiners of Dietitians and would continue the board until September 1, 2017. The board is administratively attached to the Department of State Health Services (DSHS). The bill would amend various provisions in Chapter 701 of the Occupations Code. The bill would repeal Section 701.056 (a) related to the authorization of board member per diem and Section 701.059 (d) related to the authorization of board training requirements.

Section 701.059 (c) would allow for the reimbursement of travel expenses for persons appointed to the dietitians board prior to taking office that may be incurred while attending the training program prescribed in the bill.

Section 701.160 would require the dietitians board to implement policy that ensures that the public is able to interact with the board on the Internet.

Section 701.2527 would require the dietitians board to develop and administer at least twice each calendar year a jurisprudence examination that an applicant must pass to qualify for a license. (The jurisprudence examination requirement is in addition to the license examination requirement.)

Section 701.301 (d) would require that the renewal fee for an expired license would be 1-1/4 times the amount of the renewal fee for the license, for a license expired 90 days or less. For a license expired over 90 days, the bill would require that the renewal fee would be equal to 10 1/2 times the amount of the renewal fee.

Section 701.453 would authorize the Office of the Attorney General (OAG), at the request of the dietitians board, to seek injunctions prohibiting an unlicensed dietitian from providing services.

DSHS indicates that implementing the bill's provisions would result in a minimal decrease in license renewal fee revenue generated. DSHS assumes that any cost incurred in developing the examination questions for the jurisprudence examination would be absorbed within the agency's existing resources. The Office of the Attorney General assumes that any additional work that may result from implementing the bill's provisions would be absorbed with current staff.

### Local Government Impact

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 116 Sunset Advisory Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 537 Department of State Health Services

**LBB Staff:** JOB, CL, PP, RM

2ND READING  
ENGROSSMENT

By: Truitt, Solomons, Hamric

H.B. No. 1155

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas State Board of Examiners of Dietitians.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 701.002(1) and (2), Occupations Code, are amended to read as follows:

(1) "Commissioner" means the commissioner of state health services [~~public health~~].

(2) "Department" means the [~~Texas~~] Department of State Health Services.

SECTION 2. Section 701.003, Occupations Code, is amended to read as follows:

Sec. 701.003. APPLICATION OF SUNSET ACT. The Texas State Board of Examiners of Dietitians is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017 [~~2005~~].

SECTION 3. Section 701.053, Occupations Code, is amended to read as follows:

Sec. 701.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a [~~nonprofit,~~] cooperative[~~7~~] and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with

1 mutual business or professional problems and in promoting their  
2 common interest.

3 (b) A person ~~[An officer, employee, or paid consultant of a~~  
4 ~~Texas trade association in the field of dietetics]~~ may not be a  
5 dietitians board member and may not be an employee of the department  
6 employed in a "bona fide executive, administrative, or professional  
7 capacity," as that phrase is used for purposes of establishing an  
8 exemption to the overtime provisions of the federal Fair Labor  
9 Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

10 (1) the person is an officer, employee, or paid  
11 consultant of a Texas trade association in the field of dietetics;  
12 or

13 (2) the person's spouse is ~~[board who is exempt from~~  
14 ~~the state's position classification plan or is compensated at or~~  
15 ~~above the amount prescribed by the General Appropriations Act for~~  
16 ~~step 1, salary group A17, of the position classification salary~~  
17 ~~schedule.~~

18 ~~[(c) A person who is the spouse of]~~ an officer, manager, or  
19 paid consultant of a Texas trade association in the field of  
20 dietetics ~~[may not be a dietitians board member and may not be an~~  
21 ~~employee of the board who is exempt from the state's position~~  
22 ~~classification plan or is compensated at or above the amount~~  
23 ~~prescribed by the General Appropriations Act for step 1, salary~~  
24 ~~group A17, of the position classification salary schedule].~~

25 (c) [(d)] A person may not be ~~[serve as]~~ a member of the  
26 dietitians board or act as the general counsel to the board or the  
27 department if the person is required to register as a lobbyist under

Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 4. Sections 701.055(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the dietitians board that a member:

(1) does not have at the time of taking office ~~[appointment]~~ the qualifications required by Section 701.051(a) ~~[for appointment to the board]~~;

(2) does not maintain during service on the board the qualifications required by Section 701.051(a) ~~[for appointment to the board]~~;

(3) is ineligible for membership under Section 701.052 or 701.053 ~~[violates a prohibition established by this chapter]~~;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved ~~[, unless the absence is excused]~~ by a majority vote of the board.

(c) If the executive secretary has knowledge that a potential ground for removal exists, the executive secretary shall notify the presiding officer of the dietitians board of the ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the

1 potential ground for removal involves the presiding officer, the  
2 executive secretary shall notify the assistant presiding officer,  
3 who shall then notify the governor and the attorney general that a  
4 potential ground for removal exists.

5 SECTION 5. The heading to Section 701.056, Occupations  
6 Code, is amended to read as follows:

7 Sec. 701.056. [~~PER DIEM,~~] REIMBURSEMENT.

8 SECTION 6. Section 701.056(b), Occupations Code, is amended  
9 to read as follows:

10 (b) A member is entitled to reimbursement for travel  
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17 to serve in that capacity at the pleasure of the governor.

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20 elect an [~~a presiding officer and~~] assistant presiding officer, who  
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17 (3) ~~[(7)]~~ the requirements of laws relating to open  
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21 ~~[(8) the requirements of the conflict of interest laws~~  
22 ~~and other laws relating to public officials]; and~~

23 (4) ~~[(9)]~~ any applicable ethics policies adopted by  
24 the board or the Texas Ethics Commission.

25 (c) A person appointed to the dietitians board is entitled  
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9 ~~[define]~~ the policymaking ~~[respective]~~ responsibilities of the  
10 board and the management responsibilities of the executive  
11 secretary and the staff of the department ~~[board]~~.

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17 (b) In its rules under this section, the dietitians board  
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12 ~~[keep an information file about each complaint filed with the~~  
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23 ~~[(5) other relevant information].~~

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27 (c) The dietitians board shall periodically notify the

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3 ~~board that the board or department has authority to resolve, the~~  
4 ~~board, at least quarterly and until final disposition of the~~  
5 ~~complaint, shall notify the parties to the complaint of the status~~  
6 ~~of the complaint unless notice would jeopardize an undercover~~  
7 ~~investigation.~~]

8 SECTION 13. Subchapter E, Chapter 701, Occupations Code, is  
9 amended by adding Section 701.206 to read as follows:

10 Sec. 701.206. COMPLAINT COMMITTEE. The dietitians board  
11 shall appoint at least one public member to any board committee  
12 established to review a complaint filed with the board or review an  
13 enforcement action against a license holder related to a complaint  
14 filed with the board.

15 SECTION 14. The heading to Section 701.253, Occupations  
16 Code, is amended to read as follows:

17 Sec. 701.253. LICENSE EXAMINATION.

18 SECTION 15. Section 701.253(b), Occupations Code, is  
19 amended to read as follows:

20 (b) Except as provided by Subsection (f), an applicant must  
21 pass a license [~~competency~~] examination to qualify for a license  
22 under this chapter.

23 SECTION 16. The heading to Section 701.256, Occupations  
24 Code, is amended to read as follows:

25 Sec. 701.256. LICENSING EXAMINATION RESULTS.

26 SECTION 17. Section 701.256(a), Occupations Code, is  
27 amended to read as follows:

1           (a) The department shall notify each examinee of the  
2 licensing examination results not later than the 30th day after the  
3 date the examination is administered. If an examination is graded  
4 or reviewed by a national or state testing service, the department  
5 shall notify each examinee of the examination results not later  
6 than the 14th day after the date the department receives the results  
7 from the testing service.

8           SECTION 18. Section 701.257, Occupations Code, is amended  
9 to read as follows:

10           Sec. 701.257. REEXAMINATION FOR LICENSING EXAMINATION. An  
11 applicant who fails the licensing examination three times must  
12 provide evidence to the dietitians board that the applicant has  
13 successfully completed credit hours in the applicant's areas of  
14 weakness before the applicant may apply for reexamination.

15           SECTION 19. Subchapter F, Chapter 701, Occupations Code, is  
16 amended by adding Section 701.2575 to read as follows:

17           Sec. 701.2575. JURISPRUDENCE EXAMINATION. (a) The  
18 dietitians board shall develop and administer at least twice each  
19 calendar year a jurisprudence examination to determine an  
20 applicant's knowledge of this chapter, board rules, and any other  
21 applicable laws of this state affecting the applicant's dietetics  
22 practice.

23           (b) In addition to the license examination required by  
24 Section 701.253, an applicant must pass a jurisprudence examination  
25 to qualify for a license under this chapter.

26           (c) The dietitians board shall adopt rules to implement this  
27 section, including rules related to the development and

1 administration of the examination, examination fees, guidelines  
2 for reexamination, grading the examination, and providing notice of  
3 examination results.

4 SECTION 20. Sections 701.301(a) and (d), Occupations Code,  
5 are amended to read as follows:

6 (a) A license is valid for two years [~~one year~~] after the  
7 date of issuance and may be renewed biennially [~~annually~~].

8 (d) A person whose license has been expired for 90 days or  
9 less may renew the license by paying to the dietitians board [~~the~~  
10 ~~required renewal fee and~~] a fee that is equal to 1-1/4 times [~~half~~]  
11 the amount of the renewal [~~examination~~] fee for the license. If a  
12 license has been expired for more than 90 days but less than one  
13 year, the person may renew the license by paying to the board [~~all~~  
14 ~~unpaid renewal fees and~~] a fee that is equal to 1-1/2 times the  
15 amount of the renewal fee for the license.

16 SECTION 21. Subchapter G, Chapter 701, Occupations Code, is  
17 amended by adding Section 701.304 to read as follows:

18 Sec. 701.304. GROUNDS FOR REFUSING RENEWAL. The dietitians  
19 board may refuse to renew the license of a person who fails to pay an  
20 administrative penalty imposed under Subchapter K, unless  
21 enforcement of the penalty is stayed or a court has ordered that the  
22 administrative penalty is not owed.

23 SECTION 22. Section 701.401, Occupations Code, is amended  
24 to read as follows:

25 Sec. 701.401. GROUNDS FOR DISCIPLINARY ACTION. The  
26 dietitians board shall refuse to renew a license, revoke or suspend  
27 a license, place on probation a person whose license has been

1 suspended, or reprimand a license holder for a violation of this  
2 chapter or a rule or code of ethics adopted by the board.

3 SECTION 23. Section 701.402(a), Occupations Code, is  
4 amended to read as follows:

5 (a) If the dietitians board proposes to refuse to renew a  
6 license, revoke, or suspend a person's license, the person is  
7 entitled to a hearing before the board.

8 SECTION 24. The heading to Subchapter J, Chapter 701,  
9 Occupations Code, is amended to read as follows:

10 SUBCHAPTER J. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

11 SECTION 25. Subchapter J, Chapter 701, Occupations Code, is  
12 amended by adding Sections 701.452 and 701.453 to read as follows:

13 Sec. 701.452. CEASE AND DESIST ORDER. (a) If it appears to  
14 the dietitians board that a person who is not licensed under this  
15 chapter is violating this chapter or a rule adopted under this  
16 chapter, the board after notice and opportunity for a hearing may  
17 issue a cease and desist order prohibiting the person from engaging  
18 in the activity.

19 (b) A violation of an order under this section constitutes  
20 grounds for imposing an administrative penalty under this chapter.

21 Sec. 701.453. INJUNCTION. (a) The dietitians board may  
22 apply to a district court in any county for an injunction to  
23 restrain a violation of Section 701.251 by a person.

24 (b) At the request of the board, the attorney general shall  
25 initiate and conduct an action in a district court in the state's  
26 name to obtain an injunction under this section.

27 SECTION 26. Section 701.502, Occupations Code, is amended

1 by adding Subsection (c) to read as follows:

2 (c) The dietitians board by rule shall adopt an  
3 administrative penalty schedule based on the criteria listed in  
4 Subsection (b) for violations of this chapter or board rules to  
5 ensure that the amounts of penalties imposed are appropriate to the  
6 violation. The board shall provide the administrative penalty  
7 schedule to the public on request.

8 SECTION 27. Subchapter K, Chapter 701, Occupations Code, is  
9 amended by adding Section 701.512 to read as follows:

10 Sec. 701.512. REFUND. (a) Subject to Subsection (b), the  
11 dietitians board may order a license holder to pay a refund to a  
12 consumer as provided in an agreement resulting from an informal  
13 settlement conference instead of or in addition to imposing an  
14 administrative penalty under this chapter.

15 (b) The amount of a refund ordered as provided in an  
16 agreement resulting from an informal settlement conference may not  
17 exceed the amount the consumer paid to the license holder for a  
18 service regulated by this chapter. The board may not require  
19 payment of other damages or estimate harm in a refund order.

20 SECTION 28. Sections 701.056(a) and 701.059(d),  
21 Occupations Code, are repealed.

22 SECTION 29. (a) Not later than January 1, 2006, the Texas  
23 State Board of Examiners of Dietitians shall:

24 (1) develop and implement the policies required by  
25 Sections 701.160 and 701.161, Occupations Code, as added by this  
26 Act; and

27 (2) adopt the rules required by Chapter 701,

1 Occupations Code, as amended by this Act.

2 (b) Not later than March 1, 2006, the Texas State Board of  
3 Examiners of Dietitians shall develop the jurisprudence  
4 examination required by Section 701.2575, Occupations Code, as  
5 added by this Act.

6 SECTION 30. (a) The changes in law made by Sections  
7 701.053, 701.055, and 701.059, Occupations Code, as amended by this  
8 Act, regarding the prohibitions on or qualifications of members of  
9 the Texas State Board of Examiners of Dietitians do not affect the  
10 entitlement of a member serving on the board immediately before  
11 September 1, 2005, to continue to serve and function as a member of  
12 the board for the remainder of the member's term. The changes in  
13 law made by those sections apply only to a member appointed on or  
14 after September 1, 2005.

15 (b) The changes in law made by this Act with respect to  
16 conduct that is grounds for imposition of a disciplinary sanction  
17 or for obtaining an injunction apply only to conduct that occurs on  
18 or after the effective date of this Act. Conduct that occurs before  
19 the effective date of this Act is governed by the law in effect on  
20 the date the conduct occurred, and the former law is continued in  
21 effect for that purpose.

22 (c) The change in law made by Section 701.2575, Occupations  
23 Code, as added by this Act, regarding the jurisprudence  
24 examination, applies only to an application for a license filed  
25 with the Texas State Board of Examiners of Dietitians under Chapter  
26 701, Occupations Code, as amended by this Act, on or after September  
27 1, 2006.



1           SECTION 31. Notwithstanding Section 701.301, Occupations  
2 Code, as amended by this Act, the fee for an applicant renewing an  
3 expired license under Chapter 701, Occupations Code, before  
4 September 1, 2007, is governed by the law in effect immediately  
5 before the effective date of this Act, and the former law is  
6 continued in effect for that purpose. An applicant who renews an  
7 expired license under Chapter 701, Occupations Code, on or after  
8 September 1, 2007, is subject to the fees provided by Section  
9 701.301, Occupations Code, as amended by this Act.

10          SECTION 32. This Act takes effect September 1, 2005.

F

# HOUSE ENGROSSMENT

By: Truitt, Solomons, Hamric

H.B. No. 1155

## A BILL TO BE ENTITLED

### AN ACT

relating to the continuation and functions of the Texas State Board of Examiners of Dietitians.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 701.002(1) and (2), Occupations Code, are amended to read as follows:

(1) "Commissioner" means the commissioner of state health services [~~public health~~].

(2) "Department" means the [~~Texas~~] Department of State Health Services.

SECTION 2. Section 701.003, Occupations Code, is amended to read as follows:

Sec. 701.003. APPLICATION OF SUNSET ACT. The Texas State Board of Examiners of Dietitians is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017 [~~2005~~].

SECTION 3. Section 701.053, Occupations Code, is amended to read as follows:

Sec. 701.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a [~~nonprofit,~~] cooperative[~~7~~] and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with

1 mutual business or professional problems and in promoting their  
2 common interest.

3 (b) A person ~~[An officer, employee, or paid consultant of a~~  
4 ~~Texas trade association in the field of dietetics]~~ may not be a  
5 dietitians board member and may not be an employee of the department  
6 employed in a "bona fide executive, administrative, or professional  
7 capacity," as that phrase is used for purposes of establishing an  
8 exemption to the overtime provisions of the federal Fair Labor  
9 Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

10 (1) the person is an officer, employee, or paid  
11 consultant of a Texas trade association in the field of dietetics;  
12 or

13 (2) the person's spouse is ~~[board who is exempt from~~  
14 ~~the state's position classification plan or is compensated at or~~  
15 ~~above the amount prescribed by the General Appropriations Act for~~  
16 ~~step 1, salary group A17, of the position classification salary~~  
17 ~~schedule.~~

18 ~~[(c) A person who is the spouse of]~~ an officer, manager, or  
19 paid consultant of a Texas trade association in the field of  
20 dietetics ~~[may not be a dietitians board member and may not be an~~  
21 ~~employee of the board who is exempt from the state's position~~  
22 ~~classification plan or is compensated at or above the amount~~  
23 ~~prescribed by the General Appropriations Act for step 1, salary~~  
24 ~~group A17, of the position classification salary schedule].~~

25 (c) ~~[(d)]~~ A person may not be ~~[serve as]~~ a member of the  
26 dietitians board or act as the general counsel to the board or the  
27 department if the person is required to register as a lobbyist under

Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 4. Sections 701.055(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the dietitians board that a member:

(1) does not have at the time of taking office ~~[appointment]~~ the qualifications required by Section 701.051(a) ~~[for appointment to the board]~~;

(2) does not maintain during service on the board the qualifications required by Section 701.051(a) ~~[for appointment to the board]~~;

(3) is ineligible for membership under Section 701.052 or 701.053 ~~[violates a prohibition established by this chapter]~~;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved ~~[, unless the absence is excused]~~ by a majority vote of the board.

(c) If the executive secretary has knowledge that a potential ground for removal exists, the executive secretary shall notify the presiding officer of the dietitians board of the ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the

1 potential ground for removal involves the presiding officer, the  
2 executive secretary shall notify the assistant presiding officer,  
3 who shall then notify the governor and the attorney general that a  
4 potential ground for removal exists.

5 SECTION 5. The heading to Section 701.056, Occupations  
6 Code, is amended to read as follows:

7 Sec. 701.056. [~~PER DIEM,~~] REIMBURSEMENT.

8 SECTION 6. Section 701.056(b), Occupations Code, is amended  
9 to read as follows:

10 (b) A member is entitled to reimbursement for travel  
11 [~~transportation~~] expenses as provided by the General  
12 Appropriations Act.

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3 ~~board that the board or department has authority to resolve, the~~  
4 ~~board, at least quarterly and until final disposition of the~~  
5 ~~complaint, shall notify the parties to the complaint of the status~~  
6 ~~of the complaint unless notice would jeopardize an undercover~~  
7 ~~investigation.]~~

8 SECTION 13. Subchapter E, Chapter 701, Occupations Code, is  
9 amended by adding Section 701.206 to read as follows:

10 Sec. 701.206. COMPLAINT COMMITTEE. The dietitians board  
11 shall appoint at least one public member to any board committee  
12 established to review a complaint filed with the board or review an  
13 enforcement action against a license holder related to a complaint  
14 filed with the board.

15 SECTION 14. The heading to Section 701.253, Occupations  
16 Code, is amended to read as follows:

17 Sec. 701.253. LICENSE EXAMINATION.

18 SECTION 15. Section 701.253(b), Occupations Code, is  
19 amended to read as follows:

20 (b) Except as provided by Subsection (f), an applicant must  
21 pass a license ~~[competency]~~ examination to qualify for a license  
22 under this chapter.

23 SECTION 16. The heading to Section 701.256, Occupations  
24 Code, is amended to read as follows:

25 Sec. 701.256. LICENSING EXAMINATION RESULTS.

26 SECTION 17. Section 701.256(a), Occupations Code, is  
27 amended to read as follows:

1           (a) The department shall notify each examinee of the  
2 licensing examination results not later than the 30th day after the  
3 date the examination is administered. If an examination is graded  
4 or reviewed by a national or state testing service, the department  
5 shall notify each examinee of the examination results not later  
6 than the 14th day after the date the department receives the results  
7 from the testing service.

8           SECTION 18. Section 701.257, Occupations Code, is amended  
9 to read as follows:

10           Sec. 701.257. REEXAMINATION FOR LICENSING EXAMINATION. An  
11 applicant who fails the licensing examination three times must  
12 provide evidence to the dietitians board that the applicant has  
13 successfully completed credit hours in the applicant's areas of  
14 weakness before the applicant may apply for reexamination.

15           SECTION 19. Subchapter F, Chapter 701, Occupations Code, is  
16 amended by adding Section 701.2575 to read as follows:

17           Sec. 701.2575. JURISPRUDENCE EXAMINATION. (a) The  
18 dietitians board shall develop and administer at least twice each  
19 calendar year a jurisprudence examination to determine an  
20 applicant's knowledge of this chapter, board rules, and any other  
21 applicable laws of this state affecting the applicant's dietetics  
22 practice.

23           (b) In addition to the license examination required by  
24 Section 701.253, an applicant must pass a jurisprudence examination  
25 to qualify for a license under this chapter.

26           (c) The dietitians board shall adopt rules to implement this  
27 section, including rules related to the development and

1 administration of the examination, examination fees, guidelines  
2 for reexamination, grading the examination, and providing notice of  
3 examination results.

4 SECTION 20. Sections 701.301(a) and (d), Occupations Code,  
5 are amended to read as follows:

6 (a) A license is valid for two years [~~one year~~] after the  
7 date of issuance and may be renewed biennially [~~annually~~].

8 (d) A person whose license has been expired for 90 days or  
9 less may renew the license by paying to the dietitians board [~~the~~  
10 ~~required renewal fee and~~] a fee that is equal to 1-1/4 times [~~half~~]  
11 the amount of the renewal [~~examination~~] fee for the license. If a  
12 license has been expired for more than 90 days but less than one  
13 year, the person may renew the license by paying to the board [~~all~~  
14 ~~unpaid renewal fees and~~] a fee that is equal to 1-1/2 times the  
15 amount of the renewal fee for the license.

16 SECTION 21. Subchapter G, Chapter 701, Occupations Code, is  
17 amended by adding Section 701.304 to read as follows:

18 Sec. 701.304. GROUNDS FOR REFUSING RENEWAL. The dietitians  
19 board may refuse to renew the license of a person who fails to pay an  
20 administrative penalty imposed under Subchapter K, unless  
21 enforcement of the penalty is stayed or a court has ordered that the  
22 administrative penalty is not owed.

23 SECTION 22. Section 701.401, Occupations Code, is amended  
24 to read as follows:

25 Sec. 701.401. GROUNDS FOR DISCIPLINARY ACTION. The  
26 dietitians board shall refuse to renew a license, revoke or suspend  
27 a license, place on probation a person whose license has been

1 suspended, or reprimand a license holder for a violation of this  
2 chapter or a rule or code of ethics adopted by the board.

3 SECTION 23. Section 701.402(a), Occupations Code, is  
4 amended to read as follows:

5 (a) If the dietitians board proposes to refuse to renew a  
6 license, revoke, or suspend a person's license, the person is  
7 entitled to a hearing before the board.

8 SECTION 24. The heading to Subchapter J, Chapter 701,  
9 Occupations Code, is amended to read as follows:

10 SUBCHAPTER J. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

11 SECTION 25. Subchapter J, Chapter 701, Occupations Code, is  
12 amended by adding Sections 701.452 and 701.453 to read as follows:

13 Sec. 701.452. CEASE AND DESIST ORDER. (a) If it appears to  
14 the dietitians board that a person who is not licensed under this  
15 chapter is violating this chapter or a rule adopted under this  
16 chapter, the board after notice and opportunity for a hearing may  
17 issue a cease and desist order prohibiting the person from engaging  
18 in the activity.

19 (b) A violation of an order under this section constitutes  
20 grounds for imposing an administrative penalty under this chapter.

21 Sec. 701.453. INJUNCTION. (a) The dietitians board may  
22 apply to a district court in any county for an injunction to  
23 restrain a violation of Section 701.251 by a person.

24 (b) At the request of the board, the attorney general shall  
25 initiate and conduct an action in a district court in the state's  
26 name to obtain an injunction under this section.

27 SECTION 26. Section 701.502, Occupations Code, is amended

by adding Subsection (c) to read as follows:

(c) The dietitians board by rule shall adopt an administrative penalty schedule based on the criteria listed in Subsection (b) for violations of this chapter or board rules to ensure that the amounts of penalties imposed are appropriate to the violation. The board shall provide the administrative penalty schedule to the public on request.

SECTION 27. Subchapter K, Chapter 701, Occupations Code, is amended by adding Section 701.512 to read as follows:

Sec. 701.512. REFUND. (a) Subject to Subsection (b), the dietitians board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty under this chapter.

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

SECTION 28. Sections 701.056(a) and 701.059(d), Occupations Code, are repealed.

SECTION 29. (a) Not later than January 1, 2006, the Texas State Board of Examiners of Dietitians shall:

(1) develop and implement the policies required by Sections 701.160 and 701.161, Occupations Code, as added by this Act; and

(2) adopt the rules required by Chapter 701,

1 Occupations Code, as amended by this Act.

2 (b) Not later than March 1, 2006, the Texas State Board of  
3 Examiners of Dietitians shall develop the jurisprudence  
4 examination required by Section 701.2575, Occupations Code, as  
5 added by this Act.

6 SECTION 30. (a) The changes in law made by Sections  
7 701.053, 701.055, and 701.059, Occupations Code, as amended by this  
8 Act, regarding the prohibitions on or qualifications of members of  
9 the Texas State Board of Examiners of Dietitians do not affect the  
10 entitlement of a member serving on the board immediately before  
11 September 1, 2005, to continue to serve and function as a member of  
12 the board for the remainder of the member's term. The changes in  
13 law made by those sections apply only to a member appointed on or  
14 after September 1, 2005.

15 (b) The changes in law made by this Act with respect to  
16 conduct that is grounds for imposition of a disciplinary sanction  
17 or for obtaining an injunction apply only to conduct that occurs on  
18 or after the effective date of this Act. Conduct that occurs before  
19 the effective date of this Act is governed by the law in effect on  
20 the date the conduct occurred, and the former law is continued in  
21 effect for that purpose.

22 (c) The change in law made by Section 701.2575, Occupations  
23 Code, as added by this Act, regarding the jurisprudence  
24 examination, applies only to an application for a license filed  
25 with the Texas State Board of Examiners of Dietitians under Chapter  
26 701, Occupations Code, as amended by this Act, on or after September  
27 1, 2006.

1           SECTION 31. Notwithstanding Section 701.301, Occupations  
2 Code, as amended by this Act, the fee for an applicant renewing an  
3 expired license under Chapter 701, Occupations Code, before  
4 September 1, 2007, is governed by the law in effect immediately  
5 before the effective date of this Act, and the former law is  
6 continued in effect for that purpose. An applicant who renews an  
7 expired license under Chapter 701, Occupations Code, on or after  
8 September 1, 2007, is subject to the fees provided by Section  
9 701.301, Occupations Code, as amended by this Act.

10           SECTION 32. This Act takes effect September 1, 2005.



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**Revision 1**

**March 23, 2005**

**TO:** Honorable Dianne White Delisi, Chair, House Committee on Public Health

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB1155** by Truitt (Relating to the continuation and functions of the Texas State Board of Examiners of Dietitians.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill (Sunset legislation) relates to the continuation and functions of the Texas State Board of Examiners of Dietitians and would continue the board until September 1, 2017. The board is administratively attached to the Department of State Health Services (DSHS). The bill would amend various provisions in Chapter 701 of the Occupations Code. The bill would repeal Section 701.056 (a) related to the authorization of board member per diem and Section 701.059 (d) related to the authorization of board training requirements.

Section 701.059 (c) would allow for the reimbursement of travel expenses for persons appointed to the dietitians board prior to taking office that may be incurred while attending the training program prescribed in the bill.

Section 701.160 would require the dietitians board to implement policy that ensures that the public is able to interact with the board on the Internet.

Section 701.2527 would require the dietitians board to develop and administer at least twice each calendar year a jurisprudence examination that an applicant must pass to qualify for a license. (The jurisprudence examination requirement is in addition to the license examination requirement.)

Section 701.301 (d) would require that the renewal fee for an expired license would be 1-1/4 times the amount of the renewal fee for the license, for a license expired 90 days or less. For a license expired over 90 days, the bill would require that the renewal fee would be equal to 1-1/2 times the amount of the renewal fee.

Section 701.453 would authorize the Office of the Attorney General (OAG), at the request of the dietitians board, to seek injunctions prohibiting an unlicensed dietitian from providing services.

DSHS indicates that implementing the bill's provisions would result in a minimal decrease in license renewal fee revenue generated. DSHS assumes that any cost incurred in developing the examination questions for the jurisprudence examination would be absorbed within the agency's existing resources. The Office of the Attorney General assumes that any additional work that may result from implementing the bill's provisions would be absorbed with current staff.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 116 Sunset Advisory Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 537 Department of State Health Services

**LBB Staff:** JOB, CL, PP, RM

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**March 22, 2005**

**TO:** Honorable Dianne White Delisi, Chair, House Committee on Public Health

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB1155** by Truitt (Relating to the continuation and functions of the Texas State Board of Examiners of Dietitians.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill (Sunset legislation) relates to the continuation and functions of the Texas State Board of Examiners of Dietitians and would continue the board until September 1, 2017. The board is administratively attached to the Department of State Health Services (DSHS). The bill would amend various provisions in Chapter 701 of the Occupations Code. The bill would repeal Section 701.056 (a) related to the authorization of board member per diem and Section 701.059 (d) related to the authorization of board training requirements.

Section 701.059 (c) would allow for the reimbursement of travel expenses for persons appointed to the dietitians board prior to taking office that may be incurred while attending the training program prescribed in the bill.

Section 701.160 would require the dietitians board to implement policy that ensures that the public is able to interact with the board on the Internet.

Section 701.2527 would require the dietitians board to develop and administer at least twice each calendar year a jurisprudence examination that an applicant must pass to qualify for a license. (The jurisprudence examination requirement is in addition to the license examination requirement.)

Section 701.301 (d) would require that the renewal fee for an expired license would be 1-1/4 times the amount of the renewal fee for the license, for a license expired 90 days or less. For a license expired over 90 days, the bill would require that the renewal fee would be equal to 10 1/2 times the amount of the renewal fee.

Section 701.453 would authorize the Office of the Attorney General (OAG), at the request of the dietitians board, to seek injunctions prohibiting an unlicensed dietitian from providing services.

DSHS indicates that implementing the bill's provisions would result in a minimal decrease in license renewal fee revenue generated. DSHS assumes that any cost incurred in developing the examination questions for the jurisprudence examination would be absorbed within the agency's existing resources. The Office of the Attorney General assumes that any additional work that may result from implementing the bill's provisions would be absorbed with current staff.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 116 Sunset Advisory Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 537 Department of State Health Services

**LBB Staff:** JOB, CL, PP, RM

1-1 By: Truitt, Solomons, Hamric H.B. No. 1155  
1-2 (Senate Sponsor - Shapleigh)  
1-3 (In the Senate - Received from the House April 20, 2005;  
1-4 April 21, 2005, read first time and referred to Committee on  
1-5 Government Organization; May 4, 2005, reported favorably by the  
1-6 following vote: Yeas 7, Nays 0; May 4, 2005, sent to printer.)

1-7 A BILL TO BE ENTITLED  
1-8 AN ACT

1-9 relating to the continuation and functions of the Texas State Board  
1-10 of Examiners of Dietitians.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Sections 701.002(1) and (2), Occupations Code,  
1-13 are amended to read as follows:

1-14 (1) "Commissioner" means the commissioner of state  
1-15 health services [~~public health~~].

1-16 (2) "Department" means the [~~Texas~~] Department of State  
1-17 Health Services.

1-18 SECTION 2. Section 701.003, Occupations Code, is amended to  
1-19 read as follows:

1-20 Sec. 701.003. APPLICATION OF SUNSET ACT. The Texas State  
1-21 Board of Examiners of Dietitians is subject to Chapter 325,  
1-22 Government Code (Texas Sunset Act). Unless continued in existence  
1-23 as provided by that chapter, the board is abolished September 1,  
1-24 2017 [~~2005~~].

1-25 SECTION 3. Section 701.053, Occupations Code, is amended to  
1-26 read as follows:

1-27 Sec. 701.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS.  
1-28 (a) In this section, "Texas trade association" means a  
1-29 [~~nonprofit,~~] cooperative[~~7~~] and voluntarily joined statewide  
1-30 association of business or professional competitors in this state  
1-31 designed to assist its members and its industry or profession in  
1-32 dealing with mutual business or professional problems and in  
1-33 promoting their common interest.

1-34 (b) A person [~~An officer, employee, or paid consultant of a~~  
1-35 ~~Texas trade association in the field of dietetics~~] may not be a  
1-36 dietitians board member and may not be an employee of the department  
1-37 employed in a "bona fide executive, administrative, or professional  
1-38 capacity," as that phrase is used for purposes of establishing an  
1-39 exemption to the overtime provisions of the federal Fair Labor  
1-40 Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

1-41 (1) the person is an officer, employee, or paid  
1-42 consultant of a Texas trade association in the field of dietetics;  
1-43 or

1-44 (2) the person's spouse is [~~board who is exempt from~~  
1-45 ~~the state's position classification plan or is compensated at or~~  
1-46 ~~above the amount prescribed by the General Appropriations Act for~~  
1-47 ~~step 1, salary group A17, of the position classification salary~~  
1-48 ~~schedule.~~

1-49 [~~(c) A person who is the spouse of~~] an officer, manager, or  
1-50 paid consultant of a Texas trade association in the field of  
1-51 dietetics [~~may not be a dietitians board member and may not be an~~  
1-52 ~~employee of the board who is exempt from the state's position~~  
1-53 ~~classification plan or is compensated at or above the amount~~  
1-54 ~~prescribed by the General Appropriations Act for step 1, salary~~  
1-55 ~~group A17, of the position classification salary schedule].~~

1-56 (c) [~~(d)~~] A person may not be [~~serve as~~] a member of the  
1-57 dietitians board or act as the general counsel to the board or the  
1-58 department if the person is required to register as a lobbyist under  
1-59 Chapter 305, Government Code, because of the person's activities  
1-60 for compensation on behalf of a profession related to the operation  
1-61 of the board.

1-62 SECTION 4. Sections 701.055(a) and (c), Occupations Code,  
1-63 are amended to read as follows:

1-64 (a) It is a ground for removal from the dietitians board

that a member:

(1) does not have at the time of taking office ~~[appointment]~~ the qualifications required by Section 701.051(a) ~~[for appointment to the board];~~

(2) does not maintain during service on the board the qualifications required by Section 701.051(a) ~~[for appointment to the board];~~

(3) is ineligible for membership under Section 701.052 or 701.053 ~~[violates a prohibition established by this chapter];~~

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved ~~[, unless the absence is excused]~~ by a majority vote of the board.

(c) If the executive secretary has knowledge that a potential ground for removal exists, the executive secretary shall notify the presiding officer of the dietitians board of the ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive secretary shall notify the assistant presiding officer, who shall then notify the governor and the attorney general that a potential ground for removal exists.

SECTION 5. The heading to Section 701.056, Occupations Code, is amended to read as follows:

Sec. 701.056. ~~[PER DIEM,]~~ REIMBURSEMENT.

SECTION 6. Section 701.056(b), Occupations Code, is amended to read as follows:

(b) A member is entitled to reimbursement for travel ~~[transportation]~~ expenses as provided by the General Appropriations Act.

SECTION 7. Section 701.057, Occupations Code, is amended to read as follows:

Sec. 701.057. OFFICERS. (a) The governor shall designate a member of the dietitians board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(b) Not later than the 30th day after the date the governor appoints new board members, the dietitians board shall meet to elect an ~~[a presiding officer and]~~ assistant presiding officer, who holds ~~[hold]~~ office according to board rules.

SECTION 8. Sections 701.059(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A person who is appointed to and qualifies for office as a member of the dietitians board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes ~~[Before a dietitians board member may assume the member's duties and before the member may be confirmed by the senate, the member must complete at least one course of]~~ a training program that complies with ~~[established by the board under]~~ this section.

(b) The training program ~~[established by the dietitians board]~~ must provide the person with information ~~[to a participant]~~ regarding:

(1) this chapter and the dietitians board's programs, functions, rules, and budget;

(2) ~~[the programs operated by the board,~~

~~(3) the role and functions of the board,~~

~~(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority,~~

~~(5) the current budget for the board,~~

~~(6)] the results of the most recent formal audit of the board;~~

(3) ~~(4)]~~ the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts-of-interest ~~[Chapters 551, 552, 2001, and 2002, Government Code,~~

~~(4) the requirements of the conflict of interest laws~~

~~and other laws relating to public officials]; and~~

(4) ~~any applicable ethics policies adopted by the board or the Texas Ethics Commission.~~

(c) A person appointed to the dietitians board is entitled to reimbursement, as provided by the General Appropriations Act, for travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office [In developing the training program, the dietitians board shall consult with the governor, the attorney general, and the Texas Ethics Commission].

SECTION 9. Section 701.104, Occupations Code, is amended to read as follows:

Sec. 701.104. DIVISION OF RESPONSIBILITIES. The dietitians board shall develop and implement policies that clearly separate ~~[define]~~ the policymaking ~~[respective]~~ responsibilities of the board and the management responsibilities of the executive secretary and the staff of the department ~~[board]~~.

SECTION 10. Subchapter D, Chapter 701, Occupations Code, is amended by adding Section 701.1535 to read as follows:

Sec. 701.1535. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. (a) The dietitians board shall adopt rules necessary to comply with Chapter 53.

(b) In its rules under this section, the dietitians board shall list the specific offenses for which a conviction would constitute grounds for the board to take action under Section 53.021.

SECTION 11. Subchapter D, Chapter 701, Occupations Code, is amended by adding Sections 701.159, 701.160, and 701.161 to read as follows:

Sec. 701.159. DELEGATION TO COMMITTEE. The dietitians board may delegate a function or activity required by this chapter to a committee of board members on a permanent or temporary basis if the board agrees to the delegation.

Sec. 701.160. USE OF TECHNOLOGY. The dietitians board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Sec. 701.161. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The dietitians board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The dietitians board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The dietitians board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

SECTION 12. Section 701.203, Occupations Code, is amended to read as follows:

Sec. 701.203. RECORDS OF COMPLAINTS. (a) The dietitians board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain:

(1) information about the parties to the complaint and the subject matter of the complaint;

(2) a summary of the results of the review or

4-1 investigation of the complaint; and

4-2 ~~(3) information about the disposition of the complaint~~  
 4-3 ~~[keep an information file about each complaint filed with the~~  
 4-4 ~~board. The information file must be kept current and contain a~~  
 4-5 ~~record for each complaint of:~~

4-6 ~~[(1) each person contacted in relation to the~~  
 4-7 ~~complaint,~~

4-8 ~~[(2) a summary of findings made at each step of the~~  
 4-9 ~~complaint process,~~

4-10 ~~[(3) an explanation of the legal basis and reason for a~~  
 4-11 ~~complaint that is dismissed,~~

4-12 ~~[(4) the schedule established for the complaint under~~  
 4-13 ~~Section 701.204(b) and a notation of any change in the schedule, and~~

4-14 ~~[(5) other relevant information].~~

4-15 (b) The dietitians board shall make information available  
 4-16 describing its procedures for complaint investigation and  
 4-17 resolution.

4-18 (c) The dietitians board shall periodically notify the  
 4-19 parties of the status of the complaint until final disposition of  
 4-20 the complaint. ~~[If a written complaint is filed with the dietitians~~  
 4-21 ~~board that the board or department has authority to resolve, the~~  
 4-22 ~~board, at least quarterly and until final disposition of the~~  
 4-23 ~~complaint, shall notify the parties to the complaint of the status~~  
 4-24 ~~of the complaint unless notice would jeopardize an undercover~~  
 4-25 ~~investigation.]~~

4-26 SECTION 13. Subchapter E, Chapter 701, Occupations Code, is  
 4-27 amended by adding Section 701.206 to read as follows:

4-28 Sec. 701.206. COMPLAINT COMMITTEE. The dietitians board  
 4-29 shall appoint at least one public member to any board committee  
 4-30 established to review a complaint filed with the board or review an  
 4-31 enforcement action against a license holder related to a complaint  
 4-32 filed with the board.

4-33 SECTION 14. The heading to Section 701.253, Occupations  
 4-34 Code, is amended to read as follows:

4-35 Sec. 701.253. LICENSE EXAMINATION.

4-36 SECTION 15. Section 701.253(b), Occupations Code, is  
 4-37 amended to read as follows:

4-38 (b) Except as provided by Subsection (f), an applicant must  
 4-39 pass a license ~~[competency]~~ examination to qualify for a license  
 4-40 under this chapter.

4-41 SECTION 16. The heading to Section 701.256, Occupations  
 4-42 Code, is amended to read as follows:

4-43 Sec. 701.256. LICENSING EXAMINATION RESULTS.

4-44 SECTION 17. Section 701.256(a), Occupations Code, is  
 4-45 amended to read as follows:

4-46 (a) The department shall notify each examinee of the  
 4-47 licensing examination results not later than the 30th day after the  
 4-48 date the examination is administered. If an examination is graded  
 4-49 or reviewed by a national or state testing service, the department  
 4-50 shall notify each examinee of the examination results not later  
 4-51 than the 14th day after the date the department receives the results  
 4-52 from the testing service.

4-53 SECTION 18. Section 701.257, Occupations Code, is amended  
 4-54 to read as follows:

4-55 Sec. 701.257. REEXAMINATION FOR LICENSING EXAMINATION. An  
 4-56 applicant who fails the licensing examination three times must  
 4-57 provide evidence to the dietitians board that the applicant has  
 4-58 successfully completed credit hours in the applicant's areas of  
 4-59 weakness before the applicant may apply for reexamination.

4-60 SECTION 19. Subchapter F, Chapter 701, Occupations Code, is  
 4-61 amended by adding Section 701.2575 to read as follows:

4-62 Sec. 701.2575. JURISPRUDENCE EXAMINATION. (a) The  
 4-63 dietitians board shall develop and administer at least twice each  
 4-64 calendar year a jurisprudence examination to determine an  
 4-65 applicant's knowledge of this chapter, board rules, and any other  
 4-66 applicable laws of this state affecting the applicant's dietetics  
 4-67 practice.

4-68 (b) In addition to the license examination required by  
 4-69 Section 701.253, an applicant must pass a jurisprudence examination

to qualify for a license under this chapter.

(c) The dietitians board shall adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results.

SECTION 20. Sections 701.301(a) and (d), Occupations Code, are amended to read as follows:

(a) A license is valid for two years [~~one year~~] after the date of issuance and may be renewed biennially [~~annually~~].

(d) A person whose license has been expired for 90 days or less may renew the license by paying to the dietitians board [~~the required renewal fee and~~] a fee that is equal to 1-1/4 times [~~half~~] the amount of the renewal [~~examination~~] fee for the license. If a license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board [~~all unpaid renewal fees and~~] a fee that is equal to 1-1/2 times the amount of the renewal fee for the license.

SECTION 21. Subchapter G, Chapter 701, Occupations Code, is amended by adding Section 701.304 to read as follows:

Sec. 701.304. GROUNDS FOR REFUSING RENEWAL. The dietitians board may refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter K, unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

SECTION 22. Section 701.401, Occupations Code, is amended to read as follows:

Sec. 701.401. GROUNDS FOR DISCIPLINARY ACTION. The dietitians board shall refuse to renew a license, revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a license holder for a violation of this chapter or a rule or code of ethics adopted by the board.

SECTION 23. Section 701.402(a), Occupations Code, is amended to read as follows:

(a) If the dietitians board proposes to refuse to renew a license, revoke, or suspend a person's license, the person is entitled to a hearing before the board.

SECTION 24. The heading to Subchapter J, Chapter 701, Occupations Code, is amended to read as follows:

#### SUBCHAPTER J. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

SECTION 25. Subchapter J, Chapter 701, Occupations Code, is amended by adding Sections 701.452 and 701.453 to read as follows:

Sec. 701.452. CEASE AND DESIST ORDER. (a) If it appears to the dietitians board that a person who is not licensed under this chapter is violating this chapter or a rule adopted under this chapter, the board after notice and opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) A violation of an order under this section constitutes grounds for imposing an administrative penalty under this chapter.

Sec. 701.453. INJUNCTION. (a) The dietitians board may apply to a district court in any county for an injunction to restrain a violation of Section 701.251 by a person.

(b) At the request of the board, the attorney general shall initiate and conduct an action in a district court in the state's name to obtain an injunction under this section.

SECTION 26. Section 701.502, Occupations Code, is amended by adding Subsection (c) to read as follows:

(c) The dietitians board by rule shall adopt an administrative penalty schedule based on the criteria listed in Subsection (b) for violations of this chapter or board rules to ensure that the amounts of penalties imposed are appropriate to the violation. The board shall provide the administrative penalty schedule to the public on request.

SECTION 27. Subchapter K, Chapter 701, Occupations Code, is amended by adding Section 701.512 to read as follows:

Sec. 701.512. REFUND. (a) Subject to Subsection (b), the dietitians board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal



6-1 settlement conference instead of or in addition to imposing an  
6-2 administrative penalty under this chapter.

6-3 (b) The amount of a refund ordered as provided in an  
6-4 agreement resulting from an informal settlement conference may not  
6-5 exceed the amount the consumer paid to the license holder for a  
6-6 service regulated by this chapter. The board may not require  
6-7 payment of other damages or estimate harm in a refund order.

6-8 SECTION 28. Sections 701.056(a) and 701.059(d),  
6-9 Occupations Code, are repealed.

6-10 SECTION 29. (a) Not later than January 1, 2006, the Texas  
6-11 State Board of Examiners of Dietitians shall:

6-12 (1) develop and implement the policies required by  
6-13 Sections 701.160 and 701.161, Occupations Code, as added by this  
6-14 Act; and

6-15 (2) adopt the rules required by Chapter 701,  
6-16 Occupations Code, as amended by this Act.

6-17 (b) Not later than March 1, 2006, the Texas State Board of  
6-18 Examiners of Dietitians shall develop the jurisprudence  
6-19 examination required by Section 701.2575, Occupations Code, as  
6-20 added by this Act.

6-21 SECTION 30. (a) The changes in law made by Sections  
6-22 701.053, 701.055, and 701.059, Occupations Code, as amended by this  
6-23 Act, regarding the prohibitions on or qualifications of members of  
6-24 the Texas State Board of Examiners of Dietitians do not affect the  
6-25 entitlement of a member serving on the board immediately before  
6-26 September 1, 2005, to continue to serve and function as a member of  
6-27 the board for the remainder of the member's term. The changes in  
6-28 law made by those sections apply only to a member appointed on or  
6-29 after September 1, 2005.

6-30 (b) The changes in law made by this Act with respect to  
6-31 conduct that is grounds for imposition of a disciplinary sanction  
6-32 or for obtaining an injunction apply only to conduct that occurs on  
6-33 or after the effective date of this Act. Conduct that occurs before  
6-34 the effective date of this Act is governed by the law in effect on  
6-35 the date the conduct occurred, and the former law is continued in  
6-36 effect for that purpose.

6-37 (c) The change in law made by Section 701.2575, Occupations  
6-38 Code, as added by this Act, regarding the jurisprudence  
6-39 examination, applies only to an application for a license filed  
6-40 with the Texas State Board of Examiners of Dietitians under Chapter  
6-41 701, Occupations Code, as amended by this Act, on or after September  
6-42 1, 2006.

6-43 SECTION 31. Notwithstanding Section 701.301, Occupations  
6-44 Code, as amended by this Act, the fee for an applicant renewing an  
6-45 expired license under Chapter 701, Occupations Code, before  
6-46 September 1, 2007, is governed by the law in effect immediately  
6-47 before the effective date of this Act, and the former law is  
6-48 continued in effect for that purpose. An applicant who renews an  
6-49 expired license under Chapter 701, Occupations Code, on or after  
6-50 September 1, 2007, is subject to the fees provided by Section  
6-51 701.301, Occupations Code, as amended by this Act.

6-52 SECTION 32. This Act takes effect September 1, 2005.

6-53 \* \* \* \* \*

## **BILL ANALYSIS**

Senate Research Center  
79R702 ATP-D

H.B. 1155  
By: Truitt (Shapleigh)  
Government Organization  
4/29/2005  
Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

The Texas State Board of Examiners of Dietitians (board) is subject to the Sunset Act and will be abolished on September 1, 2005, unless continued by the Legislature. The Sunset Advisory Commission review found that the licensing and regulation of dietitians is needed, but that some of the board's processes could be improved to make them fairer and more efficient for both licensees and the public.

H.B. 1155 contains the recommended improvements.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas State Board of Examiners of Dietitians in SECTION 10 (Section 701.1535, Occupations Code), SECTION 19 (Section 701.2575, Occupations Code), and SECTION 26 (Section 701.502, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 701.002(1) and (2), Occupations Code, to redefine "commissioner" and "department."

SECTION 2. Amends Section 701.003, Occupations Code, to extend the sunset date for the Texas State Board of Examiners of Dietitians (dietitians board) to September 1, 2017, from September 1, 2005.

SECTION 3. Amends Section 701.053, Occupations Code, as follows:

(a) Redefines "Texas trade association."

(b) Prohibits a person, rather than an officer, employee, or paid consultant of a Texas trade association in the field of dietetics, from being a dietitians board member and from being an employee of the Department of State Health Services (department) employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if the person falls under certain categories. Deletes existing text related previous prohibitions.

(c) Redesignated from existing text of Subsection (d). Prohibits a person from being, rather than serving as, a member of the dietitians board or acting as the general counsel to the board, or to the department, if the person is required to register as a lobbyist.

SECTION 4. Amends Sections 701.055(a) and (c), Occupations Code, as follows:

(a) Sets forth grounds for removal from the dietitians board.

(c) Requires the presiding officer to notify the governor, as well as the attorney general, if the presiding officer has knowledge that a potential ground for removal exists. Requires the executive secretary to notify the assistant presiding officer, who is then required to notify the governor and the attorney general, if the potential ground for removal involves the presiding officer.

SECTION 5. Amends the heading to Section 701.056, Occupations Code, to read as follows:

Sec. 701.056. REIMBURSEMENT.

SECTION 6. Amends Section 701.056(b), Occupations Code, to provide that a member is entitled to reimbursement for travel, rather than transportation, expenses as provided by the General Appropriations Act.

SECTION 7. Amends Section 701.057, Occupations Code, as follows:

Sec. 701.057. OFFICERS. (a) Requires the governor to designate a member of the dietitians board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(b) Creates subsection from existing text. Makes conforming changes.

SECTION 8. Amends Sections 701.059(a), (b), and (c), Occupations Code, as follows:

(a) Prohibits a person who is appointed to and qualifies for office as a member of the dietitians board from voting, deliberating, or being counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section. Deletes existing text referencing a member's confirmation by the senate.

(b) Requires the training program to provide the person with certain information. Makes nonsubstantive and conforming changes.

(c) Provides that a person appointed to the dietitians board is entitled to reimbursement, as provided by the General Appropriations Act, for travel expenses in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office. Deletes existing text relating to the development of the training program.

SECTION 9. Amends Section 701.104, Occupations Code, as follows:

Sec. 701.104. DIVISION OF RESPONSIBILITIES. Requires the dietitians board to develop and implement policies that clearly separate, rather than define, the policymaking, rather than respective, responsibilities of the board as well as the management responsibilities of the executive secretary and staff of the department, rather than board.

SECTION 10. Amends Subchapter D, Chapter 701, Occupations Code, by adding Section 701.1535, as follows:

Sec. 701.1535. RULES ON CONSEQUENCES OF CRIMINAL CONVICTION. (a) Requires the dietitians board to adopt rules necessary to comply with Chapter 53 (Consequences of Criminal Conviction).

(b) Requires the board to list the specific offenses in its rules for which a conviction would constitute grounds for the board to take action under Section 53.021 (Authority to Revoke, Suspend, or Deny License).

SECTION 11. Amends Subchapter D, Chapter 701, Occupations Code, by adding Sections 701.159, 701.160, and 701.161, as follows:

Sec. 701.159. DELEGATION TO COMMITTEE. Authorizes the dietitians board to delegate a function or activity required by this chapter to a committee of board members on a permanent or temporary basis if the board agrees to the delegation.

Sec. 701.160. USE OF TECHNOLOGY. Requires the dietitians board to implement a policy requiring the board to use appropriate technological solutions to improve the

board's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the board on the Internet.

Sec. 701.161. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) Requires the dietitians board to develop and implement a policy to encourage the use of negotiated rulemaking procedures and appropriate alternative dispute resolution procedures.

(b) Requires the dietitians board's procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for that use.

(c) Requires the dietitians board to designate a trained person to administer certain aspects of the negotiated rulemaking and alternative dispute resolution policy.

SECTION 12. Amends Section 701.203, Occupations Code, as follows:

Sec. 701.203. RECORDS OF COMPLAINTS. (a) Requires the dietitians board to maintain a system that contains certain information to promptly and efficiently act on complaints filed with the board. Deletes existing text requiring the board to keep an information file about each complaint.

(b) Requires the board to make information available describing its procedures for complaint investigation and resolution.

(c) Requires the dietitians board to periodically notify the parties of the status of the complaint until final disposition of the complaint. Deletes existing text relating to previous complaint notification requirements.

SECTION 13. Amends Subchapter E, Chapter 701, Occupations Code, by adding Section 701.206, as follows:

Sec. 701.206. COMPLAINT COMMITTEE. Requires the dietitians board to appoint at least one public member to any board committee established to review a complaint filed with the board or review an enforcement action against a license holder related to a complaint filed with the board.

SECTION 14. Amends the heading to Section 701.253, Occupations Code, to read as follows:

Sec. 701.253. LICENSE EXAMINATION.

SECTION 15. Amends Section 701.253(b), Occupations Code, to require an applicant to pass a license, rather than competency, examination to qualify for a license under this chapter.

SECTION 16. Amends the heading to Section 701.256, Occupations Code, to read as follows:

Sec. 701.256. LICENSING EXAMINATION RESULTS.

SECTION 17. Amends Section 701.256(a), Occupations Code, to make a conforming change.

SECTION 18. Amends Section 701.257, Occupations Code, to make conforming changes.

SECTION 19. Amends Subchapter F, Chapter 701, Occupations Code, by adding Section 701.2575, as follows:

Sec. 701.2575. JURISPRUDENCE EXAMINATION. (a) Requires the dietitians board to develop and administer at least twice each calendar year a jurisprudence examination to determine an applicant's knowledge of this chapter, board rules, and any other applicable laws of this state affecting the applicant's dietetics practice.

(b) Requires an applicant to pass a jurisprudence examination to qualify for a license under this chapter.

(c) Requires the dietitians board to adopt rules to implement this section, including rules related to the development and administration of the examination.

SECTION 20. Amends Sections 701.301(a) and (d), Occupations Code, as follows:

(a) Provides that a license is valid for two years, rather than one year, after the date of issuance and authorizes a license to be renewed biennially, rather than annually.

(d) Sets forth requirements for renewing an expired license.

SECTION 21. Amends Subchapter G, Chapter 701, Occupations Code, by adding Section 701.304, as follows:

Sec. 701.304. **GROUND FOR REFUSING RENEWAL.** Authorizes the dietitians board to refuse to renew the license of a person who fails to pay an administrative penalty imposed under Subchapter K (Administrative Penalty), unless enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

SECTION 22. Amends Section 701.401, Occupations Code, to make a conforming change.

SECTION 23. Amends Section 701.402(a), Occupations Code, to make conforming changes.

SECTION 24. Amends the heading to Subchapter J, Chapter 701, Occupations Code, to read as follows:

#### **SUBCHAPTER J. PENALTIES AND OTHER ENFORCEMENT PROVISIONS**

SECTION 25. Amends Subchapter J, Chapter 701, Occupations Code, by adding Sections 701.452 and 701.453, as follows:

Sec. 701.452. **CEASE AND DESIST ORDER.** (a) Authorizes the dietitians board, after notice and opportunity for a hearing, to issue a cease and desist order to a person who is not licensed under this chapter and is violating this chapter or a rule adopted under this chapter.

(b) Provides that a violation of an order under this section constitutes grounds for imposing an administrative penalty.

Sec. 701.453. **INJUNCTION.** (a) Authorizes the dietitians board to apply to a district court in any county for an injunction to restrain a violation of Section 701.251 (License Required; Commission Registration) by a person.

(b) Requires the attorney general, at the request of the board, to initiate and conduct an action in a district court in the state's name to obtain an injunction under this section.

SECTION 26. Amends Section 701.502, Occupations Code, by adding Subsection (c), to require the dietitians board, by rule, to adopt an administrative penalty schedule based on the criteria listed in Subsection (b) for violations of this chapter or board rules to ensure that the amounts of penalties are appropriate to the violation. Requires the board to provide the administrative penalty schedule to the public on request.

SECTION 27. Amends Subchapter K, Chapter 701, Occupations Code, by adding Section 701.512, as follows:

Sec. 701.512. **REFUND.** (a) Authorizes the dietitians board to order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty.

(b) Prohibits the amount of a refund ordered as provided in an agreement resulting from an informal settlement conference from exceeding the amount the consumer paid to the license holder for a service regulated by this chapter. Prohibits the board from requiring payment of other damages or estimating harm in a refund order.

SECTION 28. Repealer: Sections 701.056(a) (per diem received by a member) and 701.059(d) (use of training programs established by other state agencies), Occupations Code.

SECTION 29. (a) Requires the Texas State Board of Examiners of Dietitians to develop and implement the policies required by Sections 701.160 and 701.161, Occupations Code, as added by this Act, and to adopt the rules required by Chapter 701, Occupations Code, as amended by this Act, not later than January 1, 2006.

(b) Requires the Texas State Board of Examiners of Dietitians to develop the jurisprudence examination required by Section 701.2575, Occupations Code, as added by this Act, not later than March 1, 2006.

SECTION 30. (a) Makes application of Sections 701.053, 701.055, and 701.059, Occupations Code, as amended by this Act, prospective.

(b) Makes application of laws relating to disciplinary actions as changed by this Act prospective.

(c) Makes application of Section 701.2575, Occupations Code, as added by this Act, prospective to September 1, 2006.

SECTION 31. Makes application of Section 701.301, Occupations Code, as amended by this Act, prospective to September 1, 2007.

SECTION 32. Effective date: September 1, 2005.

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**

**April 29, 2005**

**TO:** Honorable Rodney Ellis, Chair, Senate Committee on Government Organization

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB1155** by Truitt (Relating to the continuation and functions of the Texas State Board of Examiners of Dietitians.), **As Engrossed**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill (Sunset legislation) relates to the continuation and functions of the Texas State Board of Examiners of Dietitians and would continue the board until September 1, 2017. The board is administratively attached to the Department of State Health Services (DSHS). The bill would amend various provisions in Chapter 701 of the Occupations Code. The bill would repeal Section 701.056 (a) related to the authorization of board member per diem and Section 701.059 (d) related to the authorization of board training requirements.

Section 701.059 (c) would allow for the reimbursement of travel expenses for persons appointed to the dietitians board prior to taking office that may be incurred while attending the training program prescribed in the bill.

Section 701.160 would require the dietitians board to implement policy that ensures that the public is able to interact with the board on the Internet.

Section 701.2527 would require the dietitians board to develop and administer at least twice each calendar year a jurisprudence examination that an applicant must pass to qualify for a license. (The jurisprudence examination requirement is in addition to the license examination requirement.)

Section 701.301 (d) would require that the renewal fee for an expired license would be 1-1/4 times the amount of the renewal fee for the license, for a license expired 90 days or less. For a license expired over 90 days, the bill would require that the renewal fee would be equal to 1-1/2 times the amount of the renewal fee.

Section 701.453 would authorize the Office of the Attorney General (OAG), at the request of the dietitians board, to seek injunctions prohibiting an unlicensed dietitian from providing services.

DSHS indicates that implementing the bill's provisions would result in a minimal decrease in license renewal fee revenue generated. DSHS assumes that any cost incurred in developing the examination questions for the jurisprudence examination would be absorbed within the agency's existing resources. The Office of the Attorney General assumes that any additional work that may result from implementing the bill's provisions would be absorbed with current staff.

## **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 116 Sunset Advisory Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 537 Department of State Health Services

**LBB Staff:** JOB, DLBa, CL, PP, RM



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION**  
**Revision 1**

**March 23, 2005**

**TO:** Honorable Dianne White Delisi, Chair, House Committee on Public Health

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB1155** by Truitt (Relating to the continuation and functions of the Texas State Board of Examiners of Dietitians.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill (Sunset legislation) relates to the continuation and functions of the Texas State Board of Examiners of Dietitians and would continue the board until September 1, 2017. The board is administratively attached to the Department of State Health Services (DSHS). The bill would amend various provisions in Chapter 701 of the Occupations Code. The bill would repeal Section 701.056 (a) related to the authorization of board member per diem and Section 701.059 (d) related to the authorization of board training requirements.

Section 701.059 (c) would allow for the reimbursement of travel expenses for persons appointed to the dietitians board prior to taking office that may be incurred while attending the training program prescribed in the bill.

Section 701.160 would require the dietitians board to implement policy that ensures that the public is able to interact with the board on the Internet.

Section 701.2527 would require the dietitians board to develop and administer at least twice each calendar year a jurisprudence examination that an applicant must pass to qualify for a license. (The jurisprudence examination requirement is in addition to the license examination requirement.)

Section 701.301 (d) would require that the renewal fee for an expired license would be 1-1/4 times the amount of the renewal fee for the license, for a license expired 90 days or less. For a license expired over 90 days, the bill would require that the renewal fee would be equal to 1-1/2 times the amount of the renewal fee.

Section 701.453 would authorize the Office of the Attorney General (OAG), at the request of the dietitians board, to seek injunctions prohibiting an unlicensed dietitian from providing services.

DSHS indicates that implementing the bill's provisions would result in a minimal decrease in license renewal fee revenue generated. DSHS assumes that any cost incurred in developing the examination questions for the jurisprudence examination would be absorbed within the agency's existing resources. The Office of the Attorney General assumes that any additional work that may result from implementing the bill's provisions would be absorbed with current staff.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 116 Sunset Advisory Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 537 Department of State Health Services

**LBB Staff:** JOB, CL, PP, RM

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE, 79TH LEGISLATIVE REGULAR SESSION

March 22, 2005

**TO:** Honorable Dianne White Delisi, Chair, House Committee on Public Health

**FROM:** John S. O'Brien, Deputy Director, Legislative Budget Board

**IN RE: HB1155** by Truitt (Relating to the continuation and functions of the Texas State Board of Examiners of Dietitians.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill (Sunset legislation) relates to the continuation and functions of the Texas State Board of Examiners of Dietitians and would continue the board until September 1, 2017. The board is administratively attached to the Department of State Health Services (DSHS). The bill would amend various provisions in Chapter 701 of the Occupations Code. The bill would repeal Section 701.056 (a) related to the authorization of board member per diem and Section 701.059 (d) related to the authorization of board training requirements.

Section 701.059 (c) would allow for the reimbursement of travel expenses for persons appointed to the dietitians board prior to taking office that may be incurred while attending the training program prescribed in the bill.

Section 701.160 would require the dietitians board to implement policy that ensures that the public is able to interact with the board on the Internet.

Section 701.2527 would require the dietitians board to develop and administer at least twice each calendar year a jurisprudence examination that an applicant must pass to qualify for a license. (The jurisprudence examination requirement is in addition to the license examination requirement.)

Section 701.301 (d) would require that the renewal fee for an expired license would be 1-1/4 times the amount of the renewal fee for the license, for a license expired 90 days or less. For a license expired over 90 days, the bill would require that the renewal fee would be equal to 10 1/2 times the amount of the renewal fee.

Section 701.453 would authorize the Office of the Attorney General (OAG), at the request of the dietitians board, to seek injunctions prohibiting an unlicensed dietitian from providing services.

DSHS indicates that implementing the bill's provisions would result in a minimal decrease in license renewal fee revenue generated. DSHS assumes that any cost incurred in developing the examination questions for the jurisprudence examination would be absorbed within the agency's existing resources. The Office of the Attorney General assumes that any additional work that may result from implementing the bill's provisions would be absorbed with current staff.

### Local Government Impact

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 116 Sunset Advisory Commission, 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 537 Department of State Health Services

**LBB Staff:** JOB, CL, PP, RM

## REQUEST FOR LOCAL & UNCONTESTED CALENDAR PLACEMENT

SENATOR CHRIS HARRIS, CHAIRMAN  
SENATE COMMITTEE ON ADMINISTRATION

Notice is hereby given that HB 1155, by Truitt / Shapleigh,  
(Bill No.) (Author/Sponsor)

was heard by the Committee on Government Organization on 5/3,  
2005,

and reported out with the recommendation that it be placed on the Local and Uncontested Calendar.

Vanessa Mc Mahan  
(Clerk of the reporting committee)

**IMPORTANT: A COPY OF THIS FORM MUST BE ATTACHED TO A COMMITTEE PRINTED VERSION OF THE BILL OR RESOLUTION AND SHOULD BE DELIVERED TO THE ADMINISTRATION COMMITTEE OFFICE, E1.714. DEADLINES FOR SUBMITTING BILLS AND RESOLUTIONS WILL BE ANNOUNCED ON A REGULAR BASIS.**

**ENROLLED**  
H.B. No. 1155

AN ACT

relating to the continuation and functions of the Texas State Board of Examiners of Dietitians.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 701.002(1) and (2), Occupations Code, are amended to read as follows:

(1) "Commissioner" means the commissioner of state health services [~~public health~~].

(2) "Department" means the [~~Texas~~] Department of State Health Services.

SECTION 2. Section 701.003, Occupations Code, is amended to read as follows:

Sec. 701.003. APPLICATION OF SUNSET ACT. The Texas State Board of Examiners of Dietitians is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished September 1, 2017 [~~2005~~].

SECTION 3. Section 701.053, Occupations Code, is amended to read as follows:

Sec. 701.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a [~~nonprofit,~~] cooperative[~~7~~] and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with

1 mutual business or professional problems and in promoting their  
2 common interest.

3 (b) A person ~~[An officer, employee, or paid consultant of a~~  
4 ~~Texas trade association in the field of dietetics]~~ may not be a  
5 dietitians board member and may not be an employee of the department  
6 employed in a "bona fide executive, administrative, or professional  
7 capacity," as that phrase is used for purposes of establishing an  
8 exemption to the overtime provisions of the federal Fair Labor  
9 Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

10 (1) the person is an officer, employee, or paid  
11 consultant of a Texas trade association in the field of dietetics;  
12 or

13 (2) the person's spouse is ~~[board who is exempt from~~  
14 ~~the state's position classification plan or is compensated at or~~  
15 ~~above the amount prescribed by the General Appropriations Act for~~  
16 ~~step 1, salary group A17, of the position classification salary~~  
17 ~~schedule.~~

18 ~~[(c) A person who is the spouse of]~~ an officer, manager, or  
19 paid consultant of a Texas trade association in the field of  
20 dietetics ~~[may not be a dietitians board member and may not be an~~  
21 ~~employee of the board who is exempt from the state's position~~  
22 ~~classification plan or is compensated at or above the amount~~  
23 ~~prescribed by the General Appropriations Act for step 1, salary~~  
24 ~~group A17, of the position classification salary schedule].~~

25 (c) ~~[(d)]~~ A person may not be ~~[serve as]~~ a member of the  
26 dietitians board or act as the general counsel to the board or the  
27 department if the person is required to register as a lobbyist under

Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

SECTION 4. Sections 701.055(a) and (c), Occupations Code, are amended to read as follows:

(a) It is a ground for removal from the dietitians board that a member:

(1) does not have at the time of taking office ~~[appointment]~~ the qualifications required by Section 701.051(a) ~~[for appointment to the board]~~;

(2) does not maintain during service on the board the qualifications required by Section 701.051(a) ~~[for appointment to the board]~~;

(3) is ineligible for membership under Section 701.052 or 701.053 ~~[violates a prohibition established by this chapter]~~;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved ~~[, unless the absence is excused]~~ by a majority vote of the board.

(c) If the executive secretary has knowledge that a potential ground for removal exists, the executive secretary shall notify the presiding officer of the dietitians board of the ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the

1 potential ground for removal involves the presiding officer, the  
2 executive secretary shall notify the assistant presiding officer,  
3 who shall then notify the governor and the attorney general that a  
4 potential ground for removal exists.

5 SECTION 5. The heading to Section 701.056, Occupations  
6 Code, is amended to read as follows:

7 Sec. 701.056. [~~PER DIEM,~~] REIMBURSEMENT.

8 SECTION 6. Section 701.056(b), Occupations Code, is amended  
9 to read as follows:

10 (b) A member is entitled to reimbursement for travel  
11 [~~transportation~~] expenses as provided by the General  
12 Appropriations Act.

13 SECTION 7. Section 701.057, Occupations Code, is amended to  
14 read as follows:

15 Sec. 701.057. OFFICERS. (a) The governor shall designate a  
16 member of the dietitians board as the presiding officer of the board  
17 to serve in that capacity at the pleasure of the governor.

18 (b) Not later than the 30th day after the date the governor  
19 appoints new board members, the dietitians board shall meet to  
20 elect an [~~a presiding officer and~~] assistant presiding officer, who  
21 holds [~~hold~~] office according to board rules.

22 SECTION 8. Sections 701.059(a), (b), and (c), Occupations  
23 Code, are amended to read as follows:

24 (a) A person who is appointed to and qualifies for office as  
25 a member of the dietitians board may not vote, deliberate, or be  
26 counted as a member in attendance at a meeting of the board until  
27 the person completes [~~Before a dietitians board member may assume~~]



1 ~~the member's duties and before the member may be confirmed by the~~  
2 ~~senate, the member must complete at least one course of]~~ a training  
3 program that complies with ~~[established by the board under]~~ this  
4 section.

5 (b) The training program ~~[established by the dietitians~~  
6 ~~board]~~ must provide the person with information ~~[to a participant]~~  
7 regarding:

8 (1) this chapter and the dietitians board's programs,  
9 functions, rules, and budget;

10 (2) ~~[the programs operated by the board,~~  
11 ~~[(3) the role and functions of the board,~~  
12 ~~[(4) the rules of the board, with an emphasis on the~~  
13 ~~rules that relate to disciplinary and investigatory authority,~~

14 ~~[(5) the current budget for the board,~~  
15 ~~[(6)]~~ the results of the most recent formal audit of  
16 the board;

17 (3) ~~[(7)]~~ the requirements of laws relating to open  
18 meetings, public information, administrative procedure, and  
19 conflicts-of-interest ~~[Chapters 551, 552, 2001, and 2002,~~  
20 ~~Government Code,~~

21 ~~[(8) the requirements of the conflict of interest laws~~  
22 ~~and other laws relating to public officials]; and~~

23 (4) ~~[(9)]~~ any applicable ethics policies adopted by  
24 the board or the Texas Ethics Commission.

25 (c) A person appointed to the dietitians board is entitled  
26 to reimbursement, as provided by the General Appropriations Act,  
27 for travel expenses incurred in attending the training program

1 regardless of whether the attendance at the program occurs before  
2 or after the person qualifies for office [~~In developing the~~  
3 ~~training program, the dietitians board shall consult with the~~  
4 ~~governor, the attorney general, and the Texas Ethics Commission~~].

5 SECTION 9. Section 701.104, Occupations Code, is amended to  
6 read as follows:

7 Sec. 701.104. DIVISION OF RESPONSIBILITIES. The dietitians  
8 board shall develop and implement policies that clearly separate  
9 [~~define~~] the policymaking [~~respective~~] responsibilities of the  
10 board and the management responsibilities of the executive  
11 secretary and the staff of the department [~~board~~].

12 SECTION 10. Subchapter D, Chapter 701, Occupations Code, is  
13 amended by adding Section 701.1535 to read as follows:

14 Sec. 701.1535. RULES ON CONSEQUENCES OF CRIMINAL  
15 CONVICTION. (a) The dietitians board shall adopt rules necessary  
16 to comply with Chapter 53.

17 (b) In its rules under this section, the dietitians board  
18 shall list the specific offenses for which a conviction would  
19 constitute grounds for the board to take action under Section  
20 53.021.

21 SECTION 11. Subchapter D, Chapter 701, Occupations Code, is  
22 amended by adding Sections 701.159, 701.160, and 701.161 to read as  
23 follows:

24 Sec. 701.159. DELEGATION TO COMMITTEE. The dietitians  
25 board may delegate a function or activity required by this chapter  
26 to a committee of board members on a permanent or temporary basis if  
27 the board agrees to the delegation.

1        Sec. 701.160. USE OF TECHNOLOGY. The dietitians board  
2 shall implement a policy requiring the board to use appropriate  
3 technological solutions to improve the board's ability to perform  
4 its functions. The policy must ensure that the public is able to  
5 interact with the board on the Internet.

6        Sec. 701.161. NEGOTIATED RULEMAKING AND ALTERNATIVE  
7 DISPUTE RESOLUTION POLICY. (a) The dietitians board shall develop  
8 and implement a policy to encourage the use of:

9            (1) negotiated rulemaking procedures under Chapter  
10 2008, Government Code, for the adoption of board rules; and

11           (2) appropriate alternative dispute resolution  
12 procedures under Chapter 2009, Government Code, to assist in the  
13 resolution of internal and external disputes under the board's  
14 jurisdiction.

15        (b) The dietitians board's procedures relating to  
16 alternative dispute resolution must conform, to the extent  
17 possible, to any model guidelines issued by the State Office of  
18 Administrative Hearings for the use of alternative dispute  
19 resolution by state agencies.

20        (c) The dietitians board shall designate a trained person  
21 to:

22           (1) coordinate the implementation of the policy  
23 adopted under Subsection (a);

24           (2) serve as a resource for any training needed to  
25 implement the procedures for negotiated rulemaking or alternative  
26 dispute resolution; and

27           (3) collect data concerning the effectiveness of those

1 procedures, as implemented by the board.

2 SECTION 12. Section 701.203, Occupations Code, is amended  
3 to read as follows:

4 Sec. 701.203. RECORDS OF COMPLAINTS. (a) The dietitians  
5 board shall maintain a system to promptly and efficiently act on  
6 complaints filed with the board. The board shall maintain:

7 (1) information about the parties to the complaint and  
8 the subject matter of the complaint;

9 (2) a summary of the results of the review or  
10 investigation of the complaint; and

11 (3) information about the disposition of the complaint  
12 ~~[keep an information file about each complaint filed with the~~  
13 ~~board. The information file must be kept current and contain a~~  
14 ~~record for each complaint of:~~

15 ~~[(1) each person contacted in relation to the~~  
16 ~~complaint,~~

17 ~~[(2) a summary of findings made at each step of the~~  
18 ~~complaint process,~~

19 ~~[(3) an explanation of the legal basis and reason for a~~  
20 ~~complaint that is dismissed,~~

21 ~~[(4) the schedule established for the complaint under~~  
22 ~~Section 701.204(b) and a notation of any change in the schedule; and~~

23 ~~[(5) other relevant information].~~

24 (b) The dietitians board shall make information available  
25 describing its procedures for complaint investigation and  
26 resolution.

27 (c) The dietitians board shall periodically notify the

1 parties of the status of the complaint until final disposition of  
2 the complaint. [~~If a written complaint is filed with the dietitians~~  
3 ~~board that the board or department has authority to resolve, the~~  
4 ~~board, at least quarterly and until final disposition of the~~  
5 ~~complaint, shall notify the parties to the complaint of the status~~  
6 ~~of the complaint unless notice would jeopardize an undercover~~  
7 ~~investigation.~~]

8 SECTION 13. Subchapter E, Chapter 701, Occupations Code, is  
9 amended by adding Section 701.206 to read as follows:

10 Sec. 701.206. COMPLAINT COMMITTEE. The dietitians board  
11 shall appoint at least one public member to any board committee  
12 established to review a complaint filed with the board or review an  
13 enforcement action against a license holder related to a complaint  
14 filed with the board.

15 SECTION 14. The heading to Section 701.253, Occupations  
16 Code, is amended to read as follows:

17 Sec. 701.253. LICENSE EXAMINATION.

18 SECTION 15. Section 701.253(b), Occupations Code, is  
19 amended to read as follows:

20 (b) Except as provided by Subsection (f), an applicant must  
21 pass a license [~~competency~~] examination to qualify for a license  
22 under this chapter.

23 SECTION 16. The heading to Section 701.256, Occupations  
24 Code, is amended to read as follows:

25 Sec. 701.256. LICENSING EXAMINATION RESULTS.

26 SECTION 17. Section 701.256(a), Occupations Code, is  
27 amended to read as follows:

(a) The department shall notify each examinee of the licensing examination results not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national or state testing service, the department shall notify each examinee of the examination results not later than the 14th day after the date the department receives the results from the testing service.

SECTION 18. Section 701.257, Occupations Code, is amended to read as follows:

Sec. 701.257. REEXAMINATION FOR LICENSING EXAMINATION. An applicant who fails the licensing examination three times must provide evidence to the dietitians board that the applicant has successfully completed credit hours in the applicant's areas of weakness before the applicant may apply for reexamination.

SECTION 19. Subchapter F, Chapter 701, Occupations Code, is amended by adding Section 701.2575 to read as follows:

Sec. 701.2575. JURISPRUDENCE EXAMINATION. (a) The dietitians board shall develop and administer at least twice each calendar year a jurisprudence examination to determine an applicant's knowledge of this chapter, board rules, and any other applicable laws of this state affecting the applicant's dietetics practice.

(b) In addition to the license examination required by Section 701.253, an applicant must pass a jurisprudence examination to qualify for a license under this chapter.

(c) The dietitians board shall adopt rules to implement this section, including rules related to the development and

1 administration of the examination, examination fees, guidelines  
2 for reexamination, grading the examination, and providing notice of  
3 examination results.

4 SECTION 20. Sections 701.301(a) and (d), Occupations Code,  
5 are amended to read as follows:

6 (a) A license is valid for two years [~~one year~~] after the  
7 date of issuance and may be renewed biennially [~~annually~~].

8 (d) A person whose license has been expired for 90 days or  
9 less may renew the license by paying to the dietitians board [~~the~~  
10 ~~required renewal fee and~~] a fee that is equal to 1-1/4 times [~~half~~]  
11 the amount of the renewal [~~examination~~] fee for the license. If a  
12 license has been expired for more than 90 days but less than one  
13 year, the person may renew the license by paying to the board [~~all~~  
14 ~~unpaid renewal fees and~~] a fee that is equal to 1-1/2 times the  
15 amount of the renewal fee for the license.

16 SECTION 21. Subchapter G, Chapter 701, Occupations Code, is  
17 amended by adding Section 701.304 to read as follows:

18 Sec. 701.304. GROUNDS FOR REFUSING RENEWAL. The dietitians  
19 board may refuse to renew the license of a person who fails to pay an  
20 administrative penalty imposed under Subchapter K, unless  
21 enforcement of the penalty is stayed or a court has ordered that the  
22 administrative penalty is not owed.

23 SECTION 22. Section 701.401, Occupations Code, is amended  
24 to read as follows:

25 Sec. 701.401. GROUNDS FOR DISCIPLINARY ACTION. The  
26 dietitians board shall refuse to renew a license, revoke or suspend  
27 a license, place on probation a person whose license has been

1 suspended, or reprimand a license holder for a violation of this  
2 chapter or a rule or code of ethics adopted by the board.

3 SECTION 23. Section 701.402(a), Occupations Code, is  
4 amended to read as follows:

5 (a) If the dietitians board proposes to refuse to renew a  
6 license, revoke, or suspend a person's license, the person is  
7 entitled to a hearing before the board.

8 SECTION 24. The heading to Subchapter J, Chapter 701,  
9 Occupations Code, is amended to read as follows:

10 SUBCHAPTER J. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

11 SECTION 25. Subchapter J, Chapter 701, Occupations Code, is  
12 amended by adding Sections 701.452 and 701.453 to read as follows:

13 Sec. 701.452. CEASE AND DESIST ORDER. (a) If it appears to  
14 the dietitians board that a person who is not licensed under this  
15 chapter is violating this chapter or a rule adopted under this  
16 chapter, the board after notice and opportunity for a hearing may  
17 issue a cease and desist order prohibiting the person from engaging  
18 in the activity.

19 (b) A violation of an order under this section constitutes  
20 grounds for imposing an administrative penalty under this chapter.

21 Sec. 701.453. INJUNCTION. (a) The dietitians board may  
22 apply to a district court in any county for an injunction to  
23 restrain a violation of Section 701.251 by a person.

24 (b) At the request of the board, the attorney general shall  
25 initiate and conduct an action in a district court in the state's  
26 name to obtain an injunction under this section.

27 SECTION 26. Section 701.502, Occupations Code, is amended



1 by adding Subsection (c) to read as follows:

2 (c) The dietitians board by rule shall adopt an  
3 administrative penalty schedule based on the criteria listed in  
4 Subsection (b) for violations of this chapter or board rules to  
5 ensure that the amounts of penalties imposed are appropriate to the  
6 violation. The board shall provide the administrative penalty  
7 schedule to the public on request.

8 SECTION 27. Subchapter K, Chapter 701, Occupations Code, is  
9 amended by adding Section 701.512 to read as follows:

10 Sec. 701.512. REFUND. (a) Subject to Subsection (b), the  
11 dietitians board may order a license holder to pay a refund to a  
12 consumer as provided in an agreement resulting from an informal  
13 settlement conference instead of or in addition to imposing an  
14 administrative penalty under this chapter.

15 (b) The amount of a refund ordered as provided in an  
16 agreement resulting from an informal settlement conference may not  
17 exceed the amount the consumer paid to the license holder for a  
18 service regulated by this chapter. The board may not require  
19 payment of other damages or estimate harm in a refund order.

20 SECTION 28. Sections 701.056(a) and 701.059(d),  
21 Occupations Code, are repealed.

22 SECTION 29. (a) Not later than January 1, 2006, the Texas  
23 State Board of Examiners of Dietitians shall:

24 (1) develop and implement the policies required by  
25 Sections 701.160 and 701.161, Occupations Code, as added by this  
26 Act; and

27 (2) adopt the rules required by Chapter 701,

Occupations Code, as amended by this Act.

(b) Not later than March 1, 2006, the Texas State Board of Examiners of Dietitians shall develop the jurisprudence examination required by Section 701.2575, Occupations Code, as added by this Act.

SECTION 30. (a) The changes in law made by Sections 701.053, 701.055, and 701.059, Occupations Code, as amended by this Act, regarding the prohibitions on or qualifications of members of the Texas State Board of Examiners of Dietitians do not affect the entitlement of a member serving on the board immediately before September 1, 2005, to continue to serve and function as a member of the board for the remainder of the member's term. The changes in law made by those sections apply only to a member appointed on or after September 1, 2005.

(b) The changes in law made by this Act with respect to conduct that is grounds for imposition of a disciplinary sanction or for obtaining an injunction apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

(c) The change in law made by Section 701.2575, Occupations Code, as added by this Act, regarding the jurisprudence examination, applies only to an application for a license filed with the Texas State Board of Examiners of Dietitians under Chapter 701, Occupations Code, as amended by this Act, on or after September 1, 2006.

1           SECTION 31. Notwithstanding Section 701.301, Occupations  
2 Code, as amended by this Act, the fee for an applicant renewing an  
3 expired license under Chapter 701, Occupations Code, before  
4 September 1, 2007, is governed by the law in effect immediately  
5 before the effective date of this Act, and the former law is  
6 continued in effect for that purpose. An applicant who renews an  
7 expired license under Chapter 701, Occupations Code, on or after  
8 September 1, 2007, is subject to the fees provided by Section  
9 701.301, Occupations Code, as amended by this Act.

10          SECTION 32. This Act takes effect September 1, 2005.

H.B. No. 1155

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President of the Senate

---

Speaker of the House

I certify that H.B. No. 1155 was passed by the House on April 19, 2005, by a non-record vote.

---

Chief Clerk of the House

I certify that H.B. No. 1155 was passed by the Senate on May 12, 2005, by the following vote: Yeas 31, Nays 0.

---

Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

---

Governor

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 1155<sup>(1)</sup> was passed by the House

on April 19<sup>(2)</sup>, 2005, by a non-record vote.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 1155<sup>(3)</sup> was passed by the Senate

on May 12<sup>(3)</sup>, 2005, by the following vote:

Yeas 31<sup>(4)</sup>, Nays 0<sup>(5)</sup>.

\_\_\_\_\_  
Secretary of the Senate

APPROVED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

\*\*\*\* Preparation: CT26

for chief clerk use only

Bill or Resolution Number: HB 1155

## JOINT AUTHOR AUTHORIZATION

As primary author of HB 1155 I hereby authorize the following joint author(s):  
(bill or resolution #)

BURT SOLOMONS  
printed name of joint author #1

Burt Solomons  
signature of joint author #1

PEGGY HAMRIC  
printed name of joint author #2

4/11/05  
Peggy Hamric  
signature of joint author #2

JIM DUNNAM  
printed name of joint author #3

4-11-05  
signature of joint author #3

printed name of joint author #4

signature of joint author #4

Vicki Travis  
signature of primary author

11 April 05  
date

H.B. No.

1155

A BILL TO BE ENTITLED  
AN ACT

By

Vicki Hovick

relating to the continuation and functions of the Texas State Board of Examiners of Dietitians.

FEB 16 2005

Filed with the Chief Clerk

FEB 17 2005

Public Health

Read first time and referred to Committee on

MAR 30 2005

Reported favorably (~~amended~~)  
(~~substituted~~)

APR 06 2005

Sent to Committee on (Calendars)

(~~Consent & Consent Calendars~~)

APR 18 2005

Read second time (~~amended~~) (~~amended~~); passed to third reading (~~failed~~) by a (non-record vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)  
by a vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting

APR 19 2005

Read third time (~~amended~~); finally passed (~~failed to pass~~) by a (non-record vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

Engrossed

APR 20 2005

Sent to Senate

Robert Hancey

CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

APR 20 2005

Received from the House

APR 21 2005

Read and referred to Committee on

GOVERNMENT ORGANIZATION

MAY 04 2005

Reported favorably

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

MAY 12 2005

Laid before the Senate

Senate and Constitutional Rules to permit consideration suspended by (unanimous consent)  
(\_\_\_\_\_ yeas, \_\_\_\_\_ nays)

MAY 12 2005

Read second time, \_\_\_\_\_, and passed to third reading by (unanimous consent)  
(a viva voce vote)  
(\_\_\_\_\_ yeas, \_\_\_\_\_ nays)

MAY 12 2005

Senate and Constitutional 3 Day Rules suspended by a vote of 31 yeas, 0 nays

MAY 12 2005

Read third time, \_\_\_\_\_, and passed by a (viva voce vote)  
(31 yeas, 0 nays)

May 12, 2005

Returned to the House

Latacy Spaw

SECRETARY OF THE SENATE

OTHER SENATE ACTION:

MAY 12 2005

Returned from the Senate ~~(as substituted)~~  
~~(with amendments)~~

House concurred in Senate amendments by a (non-record vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

House refused to concur in Senate amendments and requested the appointment of a conference committee  
by a (non-record vote) (record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

House conferees appointed: \_\_\_\_\_, Chair; \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Senate granted House request. Senate conferees appointed: \_\_\_\_\_, Chair;  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

Conference committee report adopted (rejected) by the House by a (non-record vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting)

Conference committee report adopted (rejected) by the Senate by a (viva voce vote)  
(record vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays)

05 APR -6 PM 6:44

HOUSE OF REPRESENTATIVES